114-247

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

PRINTING BAR ASSOCIATION

No. 218.

BARTLETT DOE, APPELLANT,

vs.

HENRY C. HYDE, ASSIGNEE IN BANKRUPTCY OF THE CITY BANK OF SAVINGS, LOAN AND DISCOUNT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED JUNE 1, 1882.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

a UNITED STATES OF AMERICA, *ss:*

To Henry C. Hyde, assignee in bankruptcy of the City Bank of Savings, Loan, and Discount, bankrupt, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the 9th day of October, A. D. 1882, pursuant to an order allowing an appeal to the said Supreme Court made and entered in the circuit court of the United States for the district of California on the 31st day of January, 1882, wherein Bartlett Doe is appellant and you are appellee,
b to show cause, if any there be, why the decree in the said order allowing appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Lorenzo Sawyer, judge of the circuit court of the United States of the ninth judicial circuit, within and for the district of California, this 11th day of March, A. D. 1882, and of the Independence of the United States the 106th.

LORENZO SAWYER,
Circuit Judge.

c [Endorsed:] U. S. circuit court, dist. of Cal. B. Doe *vs.* H. C. Hyde, assignee, &c. Citation. We hereby admit due service of the within citation, this 13th day of March, 1882. Henry C. Hyde, assignee. Bishop & Field, solicitors for def't.

1 *Transcript on Appeal.*

In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the District of California.

BARTLETT DOE, Appellant,
vs.
HENRY C. HYDE, Assignee in Bankruptcy of the City Bank of Savings, Loan, and Discount, bankruptcy, Appellee.

2 *Complaint.*

In the District Court of the United States for the District of California. In Bankruptcy.

BARTLETT DOE, Complainant,
vs.
HENRY C. HYDE, Assignee in Bankruptcy of the City Bank of Savings, Loan, and Discount, bankrupt, Defendant. } In Equity.

To the Honorable Ogden Hoffman, district judge:

Humbly complaining, showeth unto your honor, your orator, Bartlett Doe, of the city of San Francisco:

I.

That on the first day of December, A. D. 1869, the City Bank of

Savings, Loan, and Discount was, for a long time prior thereto,
3 had been, and for upwards of six months thereafter was, a corporation duly formed and existing under the provisions of a law of the State of California, entitled "An act to provide for the formation of corporations for certain purposes," passed April 14, 1853, and of the several acts amendatory thereof, and supplementary thereto.

II.

That, on or about the 28th day of December, 1869, at the request of the said corporation, City Bank of Savings, Loan, and Discount, your orator loaned and advanced to said corporation, the sum of ten thousand dollars, in gold coin of the United States, and received from the said corporation its promissory note therefor, in the words and figures following, to wit:

$10,000. SAN FRANCISCO, *December* 29, 1869.

Two years after date, without grace, for value received, the City Bank of Savings, Loan, and Discount promises to pay
4 Bartlett Doe, or order, the sum of ten thousand dollars, in the gold coin of the United States of America, of the standard of the year 1861, with interest thereon at the rate of one and one quarter per cent. per month, payable monthly, in advance, in the like gold coin, until the note shall be fully paid; such interest, if not paid as it becomes due, is to be added to the principal and become a part thereof, and shall bear interest at the same rate, and in the same manner. But if any installment of said interest shall not be paid on the day when the same is made payable, and it shall be in arrear for fifteen days, it shall be optional with the payee hereof to consider the whole of said principal sum as due and payable immediately, anything hereinbefore contained to the contrary notwithstanding.

5 For the City Bank of Savings, Loan, and Discount.

H. A. COBB, *Pres.*
[L. S.] P. H. KENNEDY, *Sec'y*,
DANIEL MURPHY, *Treas'r.*

III.

Your orator further shows that the said corporation, in order to secure the payment of the said promissory note, with the interest, caused to be executed by its president, secretary and cashier, and under its corporate seal, and delivered to your orator an assignment in writing to your orator of certain promissory notes and mortgages then owned and held by said corporation, which mortgages were of record in the county recorder's office of the city and county of San Francisco, State of California, and which notes and mortgages are described as follows:

First. Promissory note of John Bell for $4,000, dated
6 August 6th, 1869, secured by mortgage of real estate recorded in liber No. 272 of mortgages, page 45.

Second. Promissory note of H. M. Whitmore for $6,000, dated

August 2, 1869, secured by mortgage of real estate, recorded in liber No. 268 of mortgages, page 240.

Third. Promissory note of Henry Ehrman for $2,550, dated June 23, 1868, secured by mortgage of real estate, recorded in liber No. 231 of mortgages, page 277.

Fourth. Promissory note of Henry Ehrman for $1,500, dated July 27, 1868, secured by mortgage of real estate, recorded in liber No. 233 of mortgages, page 253.

Fifth. Promissory note of William H. Middleton and Emilia, his wife, for $4,000, dated January 7, 1869, secured by mortgage of real estate, recorded in liber No. 249 of mortgages, page 90.

Sixth. Promissory note of William H. Middleton and
7 Emilia, his wife, for $2,500, dated April 22, 1869, secured by mortgage of real estate, recorded in liber No. 258 of mortgages, page 202.

Which instrument of assignment was duly acknowledged by the said officers as the act and deed of the said corporation, and was duly recorded in said county recorder's office, in liber No. 280 of mortgages, page 330.

IV.

Your orator further shows that the said assignment, though absolute on its face, was in truth and in fact intended as a security for the payment of the said promissory note, with the interest and expenses, and not otherwise, and your orator, as a part of the same transaction and at the same time, and at the request of the said corporation, executed under his hand and delivered to said cor-
8 poration an instrument of defeasance in writing, in the words and figures following, to wit:

Memorandum of agreement, made this twenty-eighth day of December, A. D. 1869, between Bartlett Doe, of the city of San Francisco, State of California, of the first part, and City Bank of Savings, Loan, and Discount, a corporation duly formed under the laws of the State of California, having its principal place of business in the city and county of San Francisco, of the second part.

Whereas the said party of the second part did, by instrument of assignment under the hands of its president, secretary, and treasurer, and its corporate seal, bearing even date herewith, assign, transfer, and set over to the said party of the first part, for the consideration therein mentioned, six certain indentures of mortgage, one
9 thereof bearing date the 23d day of June, A. D. 1868, recorded in the county recorder's office of the city and county of San Francisco in liber No. 231 of mortgages, page 277; one thereof bearing date the 27th day of July, A. D. 1868, recorded in said ocffie in liber No. 233 of mortgages, page 253, severally made and executed by Henry Ehrman to the said party of the first part; one thereof bearing date the 2d day of August, A. D. 1869, recorded in said office in liber No. 268 of mortgages, page 240, made by Horace M. Whitmore to the said party of the first part; one thereof bearing date the 6th day of August, A. D. 1869, recorded in said office in liber No. 272 of mortgages, page 45, made by John Bell to the

said party of the first part; one thereof bearing date the 7th day of January, 1868, recorded in said office in liber No. 249 of mortgages, page 90, made by William H. Middleton and Emelia, his wife,
10 to the said party of the first part, and the other thereof bearing date the 22d day of April, 1869, recorded in said office in liber No. 258 of mortgages, page 202, made by said William H. Middleton and wife to the said party of the first part.

Together with the several promisory notes in said several mortgages described, and the moneys due and to grow due thereon, with the interest.

Now, this agreement witnesseth, that the said assignment, although absolute on its face, was in truth and in fact intended as a mortgage to secure the payment to the said party of the first part of the certain promissory note of the party of the second part, in the words and figures following, to wit:

$10,000. SAN FRANCISCO, *December* 28, 1869.

Two years after date, without grace, for value received, the
11 City Bank of Savings, Loan, and Discount promises to pay to Barlett Doe, or order, the sum of ten thousand dollars, in gold coin of the United States of America, of the standard of the year 1861, with interest thereon at the rate of one and one-quarter per cent. per month, payable monthly, in advance, in the like gold coin until this note shall be fully paid. Such interest, if not paid as it becomes due, is to be added to the principle and become a part thereof, and shall bear interest at the same rate and in the same manner. But if any installment of such interest shall not be paid when the same is made payable, and it shall be in arrear for fifteen days, it shall be optional with the payee hereof to consider the whole of said principal sum as due and payable immediately, anything hereinbefore contained to the contrary notwithstanding.

12 And if the said party of the second part, or its successor, shall will and truly pay unto the said party of the first part, his executors, administrators, or assigns, the said sum of money secured to be paid by the said promissory note, and the interest thereon, at the times and in the manner mentioned in the said promissory note, according to the true intent and meaning thereof, and also pay the other moneys hereinafter agreed to be paid as herein provided, and these presents and the estate granted by the said assignment shall cease, determine, and be void, and the said party of the second part for itself and its successors doth covenant and agree to pay unto the said party of the first part, his executors, administrators, or assigns, the said sums of money and interest as mentioned above and secured to be paid as aforesaid, and if
13 default shall be made in the payment of the said sum of money as provided in said note above mentioned, or if the interest that may grow due thereon, or any part thereof, shall be behind and unpaid after the same should have been paid according to the terms of said promissory note, then and from thenceforth it shall be optional with the said party of the first part, his executors, administrators, and assigns, to consider the whole of said principal sum

expressed in said note as immediaiely due and payable, although the time expressed in said note for the payment thereof shall not have arrived, and immediately to enter into and upon all and singular the premises by said assignment granted or intended so to be, and from time to time to sell and dispose of the same, or any or every of them, at public or private sale for cash or on
14 credit, with or without notice, to the said party of the second part, its successors or assigns, or at maturity to for-close the said mortgages, or any of them, and to sell the mortgaged premises according to law, and out of the monies arising from any such sale to retain the principal and interest which shall then be due on the said promissory note, together with a percentage, at the rate of ten per cent. upon the amount due on said note, as counsel fees and commissioners, and also the amount of all such payments as may have been made by said party of the first part, his executors, administrators, or assigns, by reason of the permission in all or either of said mortgages, or hereinafter given, with the interest on the same, hereinafter allowed, with the expenses of such proceedings, rendering the overplus of the purchase-money (if any there
15 shall be) unto the said party of the second part, its successors or assigns. And the said party of the second part further covenants and agrees to and with the said party of the first part to pay and discharge at maturity all such taxes as may be laid or imposed upon this mortgage, or the moneys secured hereby during the continuance hereof, and upon the said several mortgages assigned as aforesaid.

And in default thereof the said party of the first part may pay and discharge the same, and shall be the sole judge of the legality of all such taxes, and the sums so paid shall bear interest at the rate of two per cent. per month, and shall be considered as secured by said assignment and be a lien upon said premises, and shall be deducted from the proceeds of the sale thereof above mentioned, with interest as herein provided.

16 All moneys payable by the party of the second part hereunder shall be paid in the gold coin of the United States of America, of the standard of the year one thousand eight hundred and sixty-one.

It is further stipulated and agreed between the parties to these presents that the said party of the second part shall be at liberty to substitute other securities of equal value with any or either of the said notes and mortgages assigned, in the place and stead of the said notes and mortgages or any of them at any time before the maturity of the note which is hereby secured.

In witness whereof the said party of the first part hath hereunto set his hand and seal, and the said party of the second part
17 hath caused these presents to be subscribed by its president and secretary thereunto, duly authorized, and its corporate seal to be hereuto affixed, the day and year first above written.

Stamped, signed, sealed, and delivered in the presence of—

—— ——.

V.

Your orator further shows that at the time of the making of the said assignment and in consideration thereof your orator paid to the said corporation the just and full sum of ten thousand dollars in the gold coin of the United States, which sum of money was received by the said corporation, mixed with the other funds, and used by it to pay and discharge its expenses, liabilities, and obligations, and to meet its indebtedness theretofore incurred to its depositors and others.

18

VI.

Your orator further shows that by the terms of the agreement between the said corporation and your orator the said corporation was to be at liberty to substitute other securities of equal value with any of the notes and mortgages so assigned to your orator in the place and stead of any of those so assigned to him at any time before the maturity of its said promissory note.

That afterwards, and on the 26th day of April, A. D. 1870, and before the maturity of said promissory note, your orator at the request of the said corporation surrendered and relinquished to it the said two promissory notes and mortgages of Henry Ehrman, and the said two promissory notes and mortgages of William H. Middleton and Emelia, his wife, and received from the said corpora-

19 tion the following described promissory notes and mortgages in the place and stead of those so surrendered and relinquished, viz:

First. Promissory note of C. C. Keene for $1,000, with interest at 1⅛th per cent. per month, compounded monthly, dated February 13, 1869, secured by mortgage, recorded in said recorder's office in liber No. 252 of Mortgages, page 18.

Second. Promissory note of James Kirby for $1,600, with interest @ 1¼ per cent. per month, compounded monthly, dated June 15, 1869, secured by mortgage, recorded in said office in liber No. 268 of Mortgages, page 47.

Third. Promissory note of Ann McMahon for $1,300, with interest at 1¼ per cent. per month, compounded monthly, dated January 5, 1870, secured by mortgage, recorded in liber No. 279 of Mortgages, page 295.

20

VII.

Your orator further shows that afterwards and on or about the sixth day of December, A. D. 1870, upon the petition of certain of its creditors presented to this honorable court, sitting as a court of bankruptcy, said corporation, City Bank of Savings, Loan, and Discount, was only adjudicated a bankrupt within the meaning and under the provision of an act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, and such proceedings were had in said matter that on the 4th day of January, A. D. 1871, Henry C. Hyde

was appointed assignee of the said bankrupt, and having duly qualified entered upon the discharge of his duties as such assignee, and has ever since continued to act in that capacity.

VIII.

21 That in the month of February, A. D. 1871, the said Henry C. Hyde, as assignee in bankruptcy of the said The City Bank of Savings, Loan, and Discount, presented his petition to this honorable court, setting up and alleging among other things that your orator had unlawfully possessed himself of the said several promissory notes and mortgages of John Bell, H. M. Whitmore, C. C. Keene, James Kirby, and Ann McMahon, and praying that your orator might be cited to appear before your honorable court to show cause why he should not be ordered to deliver up to the petitioner the securities aforesaid, and each and every of them.

That afterwards and after your orator had been cited to appear to said petition, the said Henry C. Hyde, as assignee in bankruptcy of the said City Bank of Savings, Loan, and Discount, applied
22 to your orator for and demanded to delivery to him as such assignee of the said promissory notes and mortgages of Keene, Kirby, and McMahon, and your orator believing him to be entitled to the custody thereof delivered the same to him.

IX.

Your orator further shows that afterwards, and on or about the 25th day of November, 1872, the said Henry C. Hyde, as assignee in bankruptcy of the said corporation, The City Bank of Savings, Loan, and Discount, exhibited his bill in equity in this honorable court against your orator, charging among other things that on the said 28th day of December, 1869, the said bankrupt corporation was seized and possessed of the said promissory notes and mortgages of said John Bell and Henry M. Whitmore; that on said last-
23 mentioned day certain officers of the bankrupt corporation undertook, by the assignment hereinbefore mentioned, to assign and transfer said securities to your orator as security for its indebtedness of $10,000 to him.

That the bankrupt had no right to make any such disposition of its property; that the title to said property passed to the complainant by the register's assignment; and praying that your orator might be decreed to hold said securities in trust for the complainant, and that he might be decreed to deliver over the same to him.

Your orator further shows that he appeared and answered the said bill, and afterwards the said cause came on to be heard upon the pleadings and proofs and the arguments of counsel, and a decree was thereupon, and on the — day of ——, 1876, made and
24 entered in the said cause in the words and figures following, to wit:

In the District Court of the United States for the District of California. In Equity.

HENRY C. HYDE, Assignee in Bankruptcy of the City Bank of Savings, Loan, and Discount, a Bankrupt, Complainant,

vs.

BARTLETT DOE, Defendant.

The decree heretofore made in this cause having been opened to let in further proofs, and such proofs having been taken, and the testimony closed, and this cause having been brought on to be heard upon the pleadings and proofs, and such further proofs having been read, and M. G. Cobb, Esq., of counsel for complain-
25 ant, and James T. Boyd, Esq., of counsel for the defendant, having been heard, and the said court having duly considered the said pleadings, proofs, and arguments—

On motion of James T. Boyd, Esq., of counsel for the defendant, it is ordered, adjudged, and decreed, and this court, by virtue of the power and authority therein vested, doth order, adjudge, & decree, that the said complainant is not entitled to the special relief demanded in his bill of complaint.

And it appearing from the defendant's answer that he took and received the securities described in the complaint as collateral to the promissory note of the City Bank of Savings, Loan, and Discount described in his answer; and that the complainant is entitled to the surplus, if any, which may remain after applying the said securities
26 to the payment of said promissory note, and that the complainant is entitled to have an accounting with the defendant of and concerning the same; it is on like motion further ordered that it be referred to S. Hoffman, Esq., the clerk of this court, to compute, ascertain, and report as well the amount actually due the defendant upon the promissory note of the City Bank of Savings, Loan, and Discount, mentioned in the answer of said defendant herein, as well as the amount due upon the two several promissory notes and mortgages described in the bill of complaint herein, and also to ascertain whether the said last-mentioned notes and mortgages have been paid, and, if so, when and to whom.

And this court doth reserve the consideration of the costs of
27 this suit and of all further directions until after the said clerk shall have made his report, when either party is to be at liberty to apply to the court as occasion shall require.

As by the said decree remaining of record and on file in the clerk's office of this court, and to which or to a certified copy thereof your orator prays leave to refer, will more fully appear.

That in pursuance of said decree the clerk of this court proceeded to compute and ascertain the amount due to your orator upon the said promissory note of the said bankrupt, and also the amount due upon the said securities in the said bill described, and reported the same to this court, as by the said report remaining on file in said clerk's office, and to which your orator prays leave to refer, will more fully appear.

That thereupon and after due proceedings had a decree
28 was on the 29th day of January, 1877, made by this honorable court in said cause adjudging and determining that there was due and unpaid to your orator on the 1st day of January, A. D. 1877, upon the said promissory note of the said bankrupt the sum of $26,221.30, and that the securities described in said bill amounted on that day to the sum of $19,124.48, directing the application of said securities to the payment of the amount so due to your orator, and adjudging and decreeing that after making such application there remained due and unpaid to your orator upon the said promissory note the sum of $7,096.82, as by the said decree remaining of record and on file in said clerk's office, and to which your orator prays leave to refer, will more fully appear.

That afterwards the said complainant took his appeal
29 from said last-mentioned decree to the honorable the circuit court of the United States for the district of California, which appeal was afterwards duly dismissed for want of prosecution, as by the certificate of the clerk of the said circuit court filed in the clerk's office of this court on the second day of July, 1877, and to which your orator prays leave to refer, will more fully appear.

X.

Your orator further shows that the whole amount of the said deficiency remains due and unpaid to your orator.

XI.

Your orator further shows that as he is advised and believes the said Henry C. Hyde, assignee in bankruptcy of the said City Bank of Savings, Loan, and Discount, took and received the said promissory notes and mortgages of C. C. Keene, James Kirby, and Ann
30 McMahon as a trustee for your orator, and that he holds the same and the proceeds and avails thereof, or so much thereof as may be necessary to pay off and discharge the amount of the said deficiency in trust for your orator.

XII.

Your orator further shows that, as he is informed and believes, the said Hyde has collected the said promissory notes & mortgages of the said Keene, Kirby, and McMahon; that he has collected of the said Keene, on the 19th day of June, 1872, the sum of $1,301.07; that he collected of the said Kirby, mortgage, on the 19th day of May, 1875, the sum of $500; that he collected of the said Ann McMahon, on account of her said promissory note & mortgage, on the 19th day of June, 1872, the sum of $293.80, and gave her an acquittance of the sum $——, the remainder thereof.

31 XIII.

Your orator further shows that, as he is informed and believes, and so charges the truth to be, the said Hyde, immediately after collecting the said moneys, mingled them with other moneys

to him belonging, & used the same in violation of his obligations to your orator.

XIV.

Your orator further shows that before the collection of any of the said moneys by the said assignee, your orator appeared, and on or about the eighth day of July, 1871, by leave of the court, filed his answer to the petition of the said assignee, mentioned in the eighth paragraph of this bill, setting forth in such answer the indebtedness of said bankrupt to your orator, and how the same was secured.

That in the sixth paragraph of such answer your orator
32 set forth fully and at large the facts & circumstances attending the substitution and assignment to your orator of the said promissory notes & mortgages of Keene, Kirby & McMahon for those of Henry Erhman and William H. Middleton and Amelia, his wife, which had been originally assigned to him.

That the tenth paragraph of said answer is as follows, to wit:

This respondent further avers, as to the said three promissory notes & mortgages mentioned in the sixth subdivision of this reply, that he is entitled to the possession thereof and to the moneys collected, or which may be collected thereon, by virtue of the said assignment thereof, and as security for the payment of the said indebtedness as by the said petition and answer remaining on file in said clerk's office, and to which your orator prays leave to refer,
33 will more fully appear.

XV.

Your orator further shows that afterwards, and after the bill had been filed, which is mentioned in the ninth paragraph of your orator's bill, your orator appeared and answered the said bill, setting forth particularly and at large the transactions between the said bankrupt and your orator respecting the loan by your orator to said bankrupt and the securities transferred to your orator by the said bankrupt for securing the repayment thereof, and particularly the facts and circumstances attending the substitution of the said promissory notes of Keene, Kirby and McMahon in the place and stead of the Ehrman & Middleton notes and mortgages.

And your orator averred in his said answer as to the said promissory notes and mortgages of the said Keene, Kirby and McMahon, as follows:

34 That as defendant is informed and believes plaintiff has collected the money due on said mortgages, and now holds the same, and defendant avers and insists that he is entitled to have the said moneys applied upon the said indebtedness of the said City Bank of Savings, Loan, & Discount to him, as by the said bill & answer remaining on file in the said clerk's office, and to which your orator prays leave to refer, will more fully appear.

XVI.

Your orator further shows that he has at all times insisted that he

was entitled to have the moneys due, and to grow due, upon the said Keene, Kirby, and McMahon's promissory notes & mortgages applied towards the satisfaction of the amount due, and to become due, to your orator from the said bankrupt upon the said promissory note, if it should become necessary so to apply the same,
35 of all which the said Hyde had due notice.

XVII.

Your orator further shows that after the rendition of the decree in the suit mentioned in the ninth paragraph of your orator's bill, and after the dismissal of the appeal therefrom, and after your orator had ascertained that it would become necessary to resort to the said Keene, Kerby, & McMahon promissory notes & mortgages for the payment of the amount so due to him from the said bankrupt as aforesaid, your oator applied to the said Hyde, and demanded that he pay and deliver over to your orator the said last mentioned promissory notes & mortgages, or the moneys thereby secured which the said Hyde refused, and still does neglect and refuse to do, although that your orator well hoped that the said Hyde would
36 have complied therewith, as in equity and good conscience he ought to have done.

XVIII.

Your orator further shows that, as he is informed and believes, the said Henry C. Hyde, as assignee as aforesaid, had due notice of the intention of your orator to bring this bill against him more than twenty days before the commencement of this action.

Wherefore your orator prays that the said Henry C. Hyde, as assignee in bankruptcy of the said City Bank of Savings, Loan, and Discount, may be required to set forth fully and specifically what has become of the said promissory notes and mortgages of the said Keene, Kirby and McMahon, and whether he has collected the same or either of them, or when and what sums of money he has collected upon each of them, and how the same, respectively, have been appled and disposed of.

That it may be decreed that your orator is the beneficial
37 owner of the said securities, and the moneys represented by the same, and is entitled to have the same applied upon the said indebtedness of the said bankrupt to him.

That it may be decreed that the said Hyde, assignee as aforesaid, took and received and held the said securities, and each of them and the proceeds of the collection thereof, in trust for your orator.

That he may be required to account for the same, to pay over to your orator such proceeds, with the interest thereon, to be applied upon the said indebtedness of the said bankrupt to your orator.

And that your orator may have such further relief, or may have such other relief, as the nature of his case shall require, and as shall be agreeable to equity.

May it please your honor to grant unto your orator the
38 writ of subpœna issued out of and under the seal of this honorable court, to be directed to the said Henry C. Hyde,

assignee in bankruptcy of the City Bank of Savings, Loan & Discount, bankrupt, commanding him by a certain day, and under a certain penalty therein to be inserted, to be and appear before your honorable court, and then and there to answer the premises under his corporal oath, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience.

And your orator will ever pray, &c.

BARTLETT DOE.

JAMES T. BOYD,
Sol for Compl'ts.
W. W. COPE,
Of Counsel.

UNITED STATES OF AMERICA, } ss:
District of California, }

On this twenty-fifty day of February, 1879, before me,
39 personally appeared the above-named Bartlett Doe, and made oath that he has read the above bill by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which as therein stated on his information or belief, and as to those matters he believes it to be true.

BARTLETT DOE.

Subscribed and sworn to before me, this 24th day of February, 1879.

THOMAS A. O'BRIEN,
Notary Public in and for the City and County of San Francisco, State of California.

(Endorsed:) Filed February 25th, 1879. Southard Hoffman, clerk, by A. D. Grimwood, deputy clerk.

40 *Subpœna.*

UNITED STATES OF AMERICA:

District Court of the United States, District of California. In Equity.

The President of the United States of America to Henry C. Hyde, assignee, &c., of the City Bank of Savings, Loan, and Discount, bankrupt, Greeting:

You are hereby commanded that you be and appear in said district court of the United States aforesaid, at the court-room in San Francisco, on the seventh day of April, A. D. 1879, to answer a bill of complaint exhibited against you in said court by Bartlett Doe, and to do and receive what the said court shall have considered in that behalf, and this you are not to omit, under the penalty of five thousand dollars.

Witness the Honorable Ogden Hoffman, judge of the dis-
41 trict court of the United States for the district of California, this 25th day of February, in the year of our Lord one

thousand eight hundred and seventy-nine, and of our Independence the one hundred and third.

[SEAL.] SOUTHARD HOFFMAN, *Clerk*,
By A. D. GRIMWOOD, *Deputy Clerk*.

Memorandum pursuant to Rule 12, Supreme Court U. S.

You are hereby required to enter your appearance in the above suit on or before the seventh day of April, 1879, at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken *pro confesso*.

SOUTHARD HOFFMAN, *Clerk*,
By A. D. GRIMWOOD, *Deputy Clerk*.

U. S. MASHAL'S OFFICE, DISTRICT OF CALIFORNIA.

I hereby certify that I received the within subpœna on the
42 26th day of February, 1879, and personally served the same on the 27th day of February, 1879, by delivering to and leaving with Henry C. Hyde, the said defendant named therein, personally, at the city and county of San Francisco, in said district, a certified copy thereof.

A. W. POOLE, *U. S. Marshal*,
By D. W. C. STOREY, *Deputy*.

San Francisco, February 27th, 1879.

(Endorsed:) Filed this 3rd day of March, A. D. 1879. Southard Hoffman, clerk, by A. D. Grimwood, deputy clerk.

43 *Demurrer.*

In the District Court of the United States for the District of California. In Equity.

BARTLETT DOE, Complainant,
vs
HENRY C. HYDE, assignee, &c., Defendant. } No. —.

The demurrer of Henry C. Hyde, as assignee of the City Bank of Savings, Loan, and Discount, bankrupt, the defendant to the bill of complaint of Bartlett Doe, the above-named plaintiff.

The defendant, by protestation, not confessing all or any of the matters and things in the plaintiffs' bill of complaint contained to be true, in such manner and form as the same is therein set forth and alleged, doth demur to said bill, and for cause of demurrer
44 showeth:

First. That the said plaintiff hath not in or by his said bill made or stated such a case as entitled him in a court of equity to any relief against defendant as to the matters contained in said bill, or any such matters.

Second. That the said bill of complaint of plaintiff is in the nature of a bill of review, and no *lieve* has been obtained by the plaintiff from this court to file the same.

Third. That more than two years, to wit, eight years, has elapsed before the filing of the bill of complaint herein since the said plaintiff surrendered and delivered to said defendant the said mortgages and notes for and on account of which said bill is filed, and the right of action of plaintiff to have and recover the same, and the proceeds thereof, from the defendant, if any he ever had, is barred by the provisions of the act of Congress, entitled
45 An act to establish a uniform system of bankruptcy throughout the United States, approved March 2nd, 1867, and the acts amendatory of and supplementary thereto, and especially by the provisions of section 2 of said act of Congress, and also by the provisions of section 5057 of the Revised Statutes of the United States, and generally by the provisions of the act of Congress aforesaid, and by said Revised Statutes of the United States.

Fourth. That the said plaintiff has been guilty of gross an- unexcusable laches and delay in filing his said bill, and said bill is wanting in and is devoid in equity for that reason.

Fifth. That more than four years had elapsed before the filing of the bill of complaint herein since the plaintiff surrendered and delivered to the defendant the said mortgages and notes for and on account of which his said bill of complaint is presented, and
46 the right of action of plaintiff to have and recover the same, and the proceeds thereof, if he ever had any, is barred by the provisions of sections 383 and 343 of the code of civil procedure of the State of California.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, the defendant doth demur thereto, and humbly demands the judgment of this court whether he should be compelled to make any further or other answer to the said bill of complaint, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

BISHOP AND FIFIELD,
Solicitors for Defendant.

T. B. BISHOP,
Of Counsel.

I hereby certify that, in my opinion, the foregoing demurrer is well founded in point of law.

T. B. BISHOP,
Of Counsel.

47 UNITED STATES OF AMERICA, }
District of California, } ss:

H. C. Hyde, being duly sworn, deposes and says that he is the defendant in the above-named suit, and that the foregoing demurrer is not interposed for delay.

HENRY C. HYDE.

Subscribed and sworn to before me, this 11th day of July, A. D. 1879.

[SEAL.]

GEO. T. KNOX,
Notary Public.

(Endorsed:) Filed July 12th, 1879. Southard Hoffman, clerk, by A. D. Grimwood, deputy clerk.

48 At a stated term of the district court of he United States of America for the district of California, held at the court room in the city of San Francisco, on Tuesday, the 17th day of February, in the year of our Lord one thousand eight hundred and eighty.

Present: The Honorable Ogden Hoffman, district judge.

Decree.

BARTLETT DOE
vs.
HENRY C. HYDE, Assignee, &c. } In Equity. No. 213. Decree.

This cause coming on to be heard upon the demurrer of the defendant to the plaintiff's bill of complaint, and after hearing argument of counsel of the respective parties, and the court having duly considered the same, it is now ordered and decreed that the
49 said demurrer be, and the same is hereby, sustained, and that the said bill be, and the same is hereby, dismissed.

OGDEN HOFFMAN,
Dist. Judge.

Dated San Francisco, February 17th, 1880.

(Endorsed:) Filed February 17th, 1880. Southard Hoffman, clerk, by A. D. Grimwood, deputy clerk.

Notice of Appeal.

In the District Court of the United States for the District of California. In Bankruptcy.

BARTLETT DOE, Complainant,
vs.
HENRY C. HYDE, Assignee in Bankruptcy of The City Bank of Savings, Loan, and Discount, a bankrupt, Defendant. } In Equity.

50 To the clerk of said district court, and to Henry C. Hyde, assignee, &c., the above-named defendant, or to Bishop & Fifield, his solicitors:

You are hereby notified that the complainant claims an appeal from the decree of the hon. judge of said court made and entered on the 17th day of February, A. D. 1880, against said complainant and in favor of said defendant in the above-entitled suit, and doth appeal to the circuit court of the United States for the ninth judicial circuit next to be holden in and for the district of California after the second Monday of February, A. D. 1880, and that a bond for costs has been filed in the clerk's office of said court.

BARTLETT DOE, *Complainant,*
By JAMES T. BOYD, *his Solicitor.*

Dated February 26th, 1880.

51 Services of a copy of the within notice of appeal is hereby admitted, this 26th day of Feb'y, A. D. 1880.

BISHOP & FIFIED,
Sol'r for Def't, Henry C. Hyde, Assignee, &c.

(Endorsed:) Filed February 26th, A. D. 1880. Southard Hoffman, clerk, by A. D. Grimwood, deputy clerk.

52 *Clerk's Certificate.*

UNITED STATES OF AMERICA, } ss:
District of California, }

I, Southard Hoffman, clerk of the district court of the United States for the district of California, do hereby certify that the foregoing and hereto annexed 43 pages, numbered from 1 to 43, inclusive, contain a full, true, and correct transcript of the record in said district court in the cause entitled Bartlett Doe, complainant, *vs.* Henry C. Hyde, assignee in bankruptcy of The City Bank of Savings, Loan, and Discount, bankrupt, defendant, in equity, No. 213.

Witness my hand and the seal of said district court, at San Francisco, this 8th day of March, A. D. 1880.

[SEAL.] SOUTHARD HOFFMAN,
Clerk U. S. Dist. Court, Dist. of Cal.

(Endorsed:) Transcript on appeal. Filed March 8th, 1880. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d'p'y cl'k.

53 *Decree.*

At a stated term, to wit, the February term, A. D. 1881, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the district of California, held at the court-room, in the city and county of San Francisco, on Monday, the 14th day of February, in the year of our Lord one thousand eight hundred and eighty-one.

Present: The Honorable Lorenzo Sawyer, circuit judge.

BARTLETT DOE
vs.
HENRY C. HYDE, Assignee, &c. } No. 2277.

This cause having come on regularly for hearing on appeal from the decree of the U. S. district court of this district, made and entered on the 17th day of February, 1880, and having been
54 argued by counsel, and the court having ordered that the said decree of the said district court be affirmed with costs:

Thereupon, upon consideration thereof, it is ordered, adjudged, and decreed that the demurrer of the defendant herein to the complainant's bill of complaint be, and the same hereby is, sustained, and that the said complainant's bill be, and the same hereby is, dismissed at complainant's cost.

(Signed) LORENZO SAWYER,
U. S. Circuit Judge, Ninth Jud'l Circuit.

(Endorsed:) Filed and entered February 14, 1881. L. S. B. Sawyer, clerk.

55 *Enrollment.*

In the Circuit Court of the United States, Ninth Judicial Circuit, District of California.

BARTLETT DOE *vs.* HENRY C. HYDE.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States, of the ninth judicial circuit, within and for the district of California, do hereby certify that the foregoing papers hereto annexed constitute the enrolled papers in the therein-entitled action.

Witness my hand and the seal of said circuit court, this 14th day of February, A. D. 1881.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Deputy Clerk*.

(Endorsed:) Enrolled papers. Filed 14th February, 1881. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y clerk.

56 *Order allowing Appeal.*

At a stated term, to wit, the November term, A. D. 1881, of the circuit court of the United States of America, of the ninth judicial circuit in and for the district of California, held a- the court-room in the city and county of San Francisco, on Tuesday, the 31st day of January, in the year of our Lord one thousand eight hundred and eighty-two.

Present: The Honorable Lorenzo Sawyer, circuit iudge.

BARTLETT DOE *vs.* HENRY C. HYDE. } No. 2277.

And now, at this day, on motion of J. T. Boyd, Esq., on behalf of the appellant herein, it is ordered that an appeal from the decision and decree in the above-entitled caused filed and entered on the
57 14th day of February, A. D. 1881, being a day in the February term, A. D. 1881, of this court, to the Supreme Court of the United States be, and the same hereby is, allowed. It is further ordered that a certified transcript of the pleadings, stipulations, and proceedings herein be forthwith transmitted to the Supreme Court of the United States. It is further ordered that the amount of the bond on appeal herein be fixed at the sum of five hundred dollars.

58 *Bond on Appeal.*

In the Supreme Court of the United States of America. In Equity.

BARTLETT DOE, Complainant and Appellant
vs.
HENRY C. HYDE, Assignee in Bankruptcy of The City Bank of Savings, Loan, and Discount, bankrupt, Defendant and Respondent.

Know all men by these presents, that we, John S. Doe and Edward H. Kittredge, are held and firmly bound unto Henry C. Hyde, assignee in bankruptcy of The City Bank of Savings, Loan, and Discount, bankrupt, in the sum of five hundred dollars, to be paid to the said Henry C. Hyde, assignee, his successors or assigns, to which payment well and truly to be made, we bind ourselves, and
59 each of us, jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents. Sealed. with our seals. Dated this 14th day of February, A. D. 1882.

Whereas the above-named complainant, Bartlett Doe, has prosecuted an appeal to the Supreme Court of the United States of America, to reverse the decree entered in the above-entitled cause, dismissing the bill of complaint of the above-named complainants:

Now, therefore, the conditions of this obligation is such, that if the said complainant shall prosecute his said appeal to effect, and answer all costs if he shall fail to make good his plea, then this obligation to be void; otherwise, to remain in full force and virtue.

JOHN S. DOE. [SEAL.]
EDWARD H. KITTREDGE. [SEAL.]

Signed, sealed, and delivered in presence of—
JOS. F. O'BEIRNE.

60 UNITED STATES OF AMERICA, *District of California:*

John S. Doe and Edward H. Kittredge, being duly sworn, each for himself, deposes and says: That he is a householder in said district, and is worth the sum of five hundred dollars, exclusive of property exempt from execution, and over and above all his just debts and liabilities.

JOHN S. DOE.
EDWARD H. KITTREDGE.

Subscribed and sworn to before me, this 14th day of February, A. D. 1882.

JOS. F. O'BEIRNE,
Comm'r of U. S Circuit Court, Dist of Cal.

(Endorsed:) I approve of the form & sufficiency of the within bond & of the sufficiency of the sureties thereto. (S'gd) Lorenzo Sawyer, circuit judge. Filed February 16, 1882. L. S. B. Sawyer, clerk.

61 Circuit Court of the United States, District of California.

BARTLETT DOE *vs.* HENRY C. HYDE, Assignee, &c.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit within and for the district of California, do hereby certify that the foregoing sixty pages, numbered from 1 to 60 inclusive, are a full true, and correct copy of the record and of all proceedings in the therein and above-entitled cause, and that the same together constitutes the transcript on appeal to the Supreme Court of the United States in said cause.

Witness my hand and the seal of said circuit court, this 14th day of March, 1882.

[SEAL.] L. S. B. SAWYER, *Clerk.*

Endorsed on cover: California C. C. U. S. No. 218. Bartlett Doe, appellant, *vs.* Henry C. Hyde, assignee in bankruptcy of The City Bank of Savings, Loan, and Discount. Filed 1st June, 1882.

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In the Supreme Court

OF THE

UNITED STATES.

No. 218.

Bartlett Doe,

Appellant,

vs.

Henry C. Hyde,

Assignee in Bankruptcy of the City Bank of Savings, Loan and Discount.

Brief for Appellant.

W. W. COPE,

Of Counsel.

San Francisco:
S. W. Raveley, Printer.
1884.

In the Supreme Court

OF THE

UNITED STATES.

No. 218.

Bartlett Doe,

Appellant,

vs.

Henry C. Hyde,

Assignee in Bankruptcy of the City Bank of Savings, Loan and Discount.

Brief for Appellant.

W. W. COPE,

Of Counsel.

San Francisco:
S. W. Raveley, Printer.
1884.

In the Supreme Court of the United States.

No. 218.

BARTLETT DOE,
APPELLANT,

vs.

HENRY C. HYDE,
ASSIGNEE IN BANKRUPTCY, OF THE CITY BANK OF SAVINGS, LOAN AND DISCOUNT.

BRIEF ON THE PART OF APPELLANT.

This is an appeal from a Decree of the Circuit Court for the Ninth Judicial Circuit, affirming a Decree of the District Court of the United States, for the District of California, In Equity, sustaining a Demurrer to the complainant's Bill for want of Equity, and dismissing the Bill.

The Bill was filed to subject to a Decree for a deficiency arising upon the enforcement of a promissory note and mortgage given by the City Bank of Savings, Loan and Discount to appellant, certain securities pledged for its payment, of which it is averred that the appellee wrongfully retains the possession.

The Bank in question, made its promissory note to appellant for $10,000 and interest. (Trans. fol. 3.) To secure its payment executed an assignment of certain mortgages, (Trans. fol. 5,) taking a defeasance, (Trans. fol. 8) which provides among other things as follows:

"It is further stipulated and agreed between the parties "to these presents, that the party of the second part shall be

" at liberty to substitute other securities of equal value, " with any or either of said notes and mortgages, assigned " in the place and stead of the said notes and mortgages, or " any of them at any time before the maturity of the note " which is hereby secured."

Trans. fol. 10.

The Bill further alleges a substitution of certain securities under this clause of the defeasance, being the promissory notes of Keene, Kirby & McMahon.

Trans. fol. 18.

That the Bank was forced into Bankruptcy, and appellee appointed assignee.

Trans. fol. 20.

That in the year 1871, appellee obtained possession of the substituted securities.

Trans. fol. 21.

That the appellee exhibited his Bill in Equity against appellant, in said District Court, alleging a fraudulent transfer by the Bankrupt, to the appellant, of the remaining original securities, to which appellant appeared and answered.

Trans. fol. 22.

That the District Court after a hearing upon the pleadings and proofs, made a Decree in the year 1876, establishing the right of appellant, and directing a reference to ascertain and report the amount due to him upon his promissory note.

Trans. fol. 24.

That on the 29th day of January, 1877, the Court made a Decree adjudging and decreeing a deficiency remaining after applying the securities retained by appellant to the amount due upon his promissory note of $7,096.82.

Trans. fol. 28.

That appellee took an appeal from this Decree to the Circuit Court, which appeal was dismissed July 2d, 1877.

Trans. fol. 29.

The Bill further alleges that appellee took and holds the promissory notes and mortgages of Keene, Kirby & McMahon, the substituted securities, as trustee for appellant.

Trans. fol. 29.

That appellee had notice in July, 1871, that appellant claimed a right to resort to these notes and mortgages, in case the securities retained by him should prove insufficient to pay his debt.

Trans. fols. 31, 34.

That appellant after the dismissal of the appeal from his Decree of January 29th, 1877, demanded the said securities, or their avails from the appellee, which was refused.

Trans. fol. 35.

That appellee had more than twenty days' notice of appellant's intention to bring this bill against him.

Trans. fol. 36.

The Bill prays that appellant be decreed to be the beneficial owner of said securities and entitled to have the same applied upon the debt of the Bankrupt to him; that appellee took the same in trust for him; that he may be required to account and pay over the securities or their proceeds to appellant, to be applied to said indebtedness, and for general relief. The Bill was filed February 25th, 1879.

Trans. fol. 39.

I.

The assignee is the representative both of the Bankrupt and the creditors.

Bump., p. 503.

Upon his appointment, the title to all the property of the Bankrupt, real and personal, passed to him by operation of law.

Bankrupt Law, § 14.

It became his duty to demand from all persons holding the same, all estate assigned to him by the Register or Judge, and, *e converso*, it became the duty of all persons holding any such property, to deliver it to him.

Bankrupt Law, Sec. 15.

If the assignee becomes satisfied that the property taken, does not belong to the Bankrupt, he should surrender it without delay to the owners.

In re Noakes, 1 B. R., 592.

When it appears to the Court, that the title to the property is in dispute, it may on petition of assignee, and notice to claimant, order it to be sold, and the assignee must hold the proceeds of sale in its stead. But this provision shall not prevent the *recovery of the property* from the assignee by suit commenced before the order of sale.

Bankrupt Law, Sec. 25.

II.

When the appellee obtained possession of these securities, he assumed towards them a dual relation.

1. He held them as assignee, subject to the right of appellant, to have them applied toward the satisfaction of his debt.

Bankrupt Law, Sec. 20, 14.
In re Hambright, 2 B. R., 157.
In re J. H. Lyon, 7 B. R., 182.

2. He held them as Trustee for appellant, to the extent that it might become necessary to resort to them for the payment of the bankrupt's indebtedness to him.

California Civil Code, Secs. 2223–2234.

Brown *vs.* Lynch, 1 Paige, page 147,
Howell *vs.* Ransom, 11 Paige, page 538.
2 Story's Eq. Juris., § 1255.
Pomeroy's Eq. Juris., § 155.

III.

The general creditors of this Bankrupt, have no superior equities to those of the appellant, and the assignee ought not to be permitted to assert them. The assignee should maintain an attitude of indifference between the secured creditor and the general creditors, seeking only to obtain for the latter, what of right belongs to them.

Bankrupt Law, § 1.

IV.

The assignee has no other or greater right in the property of the bankrupt, than the bankrupt itself had, except in the case of a fraudulent conveyance. He can only make such defense to the Bill of an honest creditor, as the bankrupt, if solvent, might make. If the assignee had found these securities in the street, they would be charged in his hands with the creditor's lien. There must have been an absolute and unconditional relinquishment by appellant, of his lien, to bring about a trust in these securities in favor of the general creditors. In the case at bar, there has been a continual assertion of appellant's rights to them, in terms which this assignee could not mistake.

Trans. fols. 32, 33.
Kelly *vs.* Scott, 49 N. Y., 602.
Cook *vs.* Tullis, 18 Wallace, 332.
Hardin *vs.* Osborne, 94 Ill., 571.
Linthicum *vs.* Finley, 11 Bush (Ky.) 131.

Appellant might have retained possession of the securities. Not doing so he is entitled to the protection of Section 25 of the Bankrupt Law.

V.

The Bankrupt Act, takes hold of, and administers all the property and rights of property of the bankrupt. The appellee brought appellant into the Courts of the United States in respect of his demand, and compelled him to litigate it there. The appellee was complainant in the suit, and cannot impute laches to the defendant.

Trans. fol. 22.

VI.

These securities were pledged to appellant to secure the payment of his debt. It is not paid. The only interest the Bankrupt had in them was in the surplus, if any, which might remain after payment of appellant's debt. That is the extent of the interest of appellee.

Says Bryan, J., (re Abner Hambright, cited above). "When the Act, therefore, speaks of the Estate of the "Bankrupt in the hands of the assignee, it means such Es- "tate with all the incumbrances existing upon it, at the "time of the bankruptcy. In other words, the net value of "the property, after the liens upon it, are satisfied. This "will appear upon examining the 20th Section of the Act. "* * * It is clear that the Estate of the Bankrupt in "property bound by a lien, is in the excess of the value of "the property after satisfaction of the lien, and that this is "all the act conveys to the assignee.

"He takes the property in the same plight and condition "that the bankrupt held it."

Mr. Justice Harlan, in Yeatman *vs.* Savings Inst., 95 U. S., 766, citing 2 Story, 492, and 1 Wood, 260.

In commenting on the provisions of the Bankrupt Law, McCandless, J., In the matter of Campbell VII Amer. Law Register N. S., 102, says:

"Liens by this law, as they should be, are held sacred. "To say that the vigilant creditor, who, by his diligence, "has secured his debt, and has a lien upon the property of

" the bankrupt shall come in with all the other creditors " *pro rata*, would be a perversion of the purposes of Con- " gress in the passage of the Act. No right acquired by the " creditor is affected or impaired. The 14th Section ex- " pressly protects him." * * * " These several sections " are distinct recognitions by Congress of the sanctity of " liens, obtained before the inception of proceedings in " bankruptcy."

* * * " All liens then remain intact. The Bank- " rupt's final certificate operates to discharge his person, " and future acquisitions, while at the same time, the mort- " gagee or other lien creditor shall be permitted to have " their satisfaction out of the property mortgaged or subject " to lien. A legal right without a remedy would be an " anomaly in the law. 7 How., 623."

It was the duty of the District Court to ascertain and liquidate and adjust the liens *so as to secure the rights of all parties.*

Bankrupt Law, Sec. 1.
Ray *vs.* Norseworthy, 23 Wall., 128.

VII.

The necessity of resorting to these securities, was not determined until the Decree of the District Court ascertaining the deficiency, became final in July, 1877. The appellant could not have brought his action before that time; *non constat* that he would have to resort to these securities. The Bill was exhibited in February, 1879. There was no laches on the part of appellant, either by analogy to the statute of limitations or otherwise.

California Code of Civil Procedure, Sec. 336.

The Statute begins to run only from the time the cause of action accrued.

Bankrupt Act, Sec. 2.

This action was brought within two years after the cause of action accrued.

I respectfully submit that the judgment of the Court below should be reversed.

W. W. COPE,
Counsel for Appellant.

114-252

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 103.

PHILADELPHIA BAR ASSOCIATION

CHARLES R. BISSELL, APPELLANT.

vs.

SIMON H. FOSS, ABSALOM V. HUNTER, AND THE FIRST NATIONAL BANK OF DENVER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED OCTOBER 15, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 103.

CHARLES R. BISSELL, APPELLANT.

vs.

SIMON H. FOSS, ABSALOM V. HUNTER, AND THE FIRST NATIONAL BANK OF DENVER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

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1 Pleas in the Circuit Court of the United States for the District of Colorado.

Be it remembered that heretofore and on, to wit, the 26th day of April, A. D. 1879, came Simon H. Foss and Absalom V. Hunter, by David P. Dyer, Esq., their solicitor, and filed in said court their certain bill of complaint and sued out of said court a writ of subpœna in chancery, against The First National Bank of Denver, in the State of Colorado, and Charles R. Bissell.

And the said bill of complaint is in words and figures as follows, to wit:

Bill.

UNITED STATES OF AMERICA, *District of Colorado*:

In the Circuit Court of the United States for the District of Colorado, Northern Division. May Term, 1879.

2 SIMON H. FOSS and ABSALOM V. HUNTER, Complainants,
against
THE FIRST NATIONAL BANK OF DENVER, in the State of Colorado, and CHARLES R. BISSELL, Defendants. } Bill in Equity.

To the honorable the judges of the circuit court of the United States for the district of Colorado, and within and for the northern division thereof:

The bill of complaint of Simon H. Foss and Absalom V. Hunter, complainants, citizens and residents of the State of Colorado, against "The First National Bank of Denver," in the State of Colorado, and Charles R. Bissell, defendants, also citizens of said State of Colorado.

Humbly complaining your orators show unto your honors that they are citizens of and residing in the said State of Colorado; that the said defendants are also citizens of and residing within said State, and that the defendant, the "First National Bank of Denver" is a national banking association, established, organized, and incorporated at the city of Denver, within said district of Colo-
3 rado, under and in pursuance of an act of Congress of the United States entitled "the national bank act," approved June 3d, 1864, and acts supplementary thereto and amendatory thereof; that on the sixteenth day of May, 1878, your orators and said defendant Bissell and Horace A. W. Tabor and Jerome B. Chaffee entered into an agreement in the words and figures following, to wit:

This memorandum of agreement, made and executed in duplicate this sixteenth day of November, A. D. 1878, by and between Horace A. W. Tabor, Charles R. Bissell, and Simon H. Foss, of the county of Lake; Jerome B. Chaffee, of the county of Arapahoe, and Absalom V. Hunter, of the county of El Paso, all in the State of Colorado, witnesseth: That whereas the above-named parties have this day consolidated their interests in certain mines and mining property

situated in California mining district, in the county of Lake and State of Colorado, and have executed their certain deed bearing even date herewith, and conveying to Bela M. Hughes, of the county of Arapahoe and State of Colorado, all of their interests in said mines and mining property (to which said deed reference is hereby made for a description of the mines and mining property herein referred to), in trust for them according to their respective rights and interests therein, that is to say, the seventy-three
4 one hundred parts of each and all of said mines and mining property in said deed described in trust for the above-named Horace A. W. Tabor and Jerome B. Chaffee, and the twenty-seven one-hundredth parts thereof in trust for the said Charles R. Bissell, Simon H. Foss, and Absalom V. Hunter; and whereas heretofore suits at law have been commenced by and between the parties hereto affecting the mining property above referred to and mineral-bearing ores taken therefrom:

Now, therefore, the said parties hereto, in consideration of the consolidation of their interests in said mining property and of the execution of said deed to Bela M. Hughes, trustee as aforesaid, hereby covenant and agree to and with each other that all suits of any character and nature heretofore instituted by said parties hereto, or any or either of them, and now pending in any of the courts of the State of Colorado, which affect the mines and mining property, or any part thereof, described in said deed to Bela M. Hughes, trustee, or any mineral-bearing ores extracted therefrom, shall be forthwith dismissed, the plaintiff or plaintiffs in each suit paying all costs, except the attorney's fees accruing therein.

And the said parties each for himself hereby release, relinquish, and acknowledge satisfaction in full of all and every right of action or claim for damages which they, or either of them, may have against any of the parties to said suits by reason of the institution thereof, or of either of them. The undersigned, Charles R.
5 Bissell, Simon H. Foss, and Absalom V. Hunter, hereby renounce, release, and relinquish all claim which they, or either of them, may have in or to the one-sixteenth part of the New Discovery lode or mining claim, for the recovery of which they have instituted suit against the above-named Horace A. Tabor and one August Rische, grantor of the above-named Jerome B. Chaffee.

It is hereby further understood and agreed by the parties hereto that the mines and mining property embraced in the aforesaid consolidation and named in the aforementioned deed to Bela M. Hughes, trustee, shall be worked in a good, substantial, and workmanlike manner, under such regulations as the parties hereto may provide, and the proceeds thereof transmitted to the First National Bank of Denver on the first day of each and every month. The balance of the proceeds of said mines remaining in said bank, after defraying all expenses of working and operating the mines, shall be divided and credited upon the books of said bank as follows, to wit: Seventy-three one-hundredth parts shall be placed to the credit of the above-named Tabor and Chaffee, and twenty-seven one-hundredth parts to the credit of the above-named Bissell, Foss, and

Hunter. Said balance of credit shall be subject as agreed upon by the respective parties and made known to said bank. In case of any disagreement between the parties hereto in regard to the manner of working or to the management of said mining property, such difference or disagreements shall be submitted to Bela
6 M. Hughes, trustee as aforesaid, or to his successor in trust, if then acting as trustee, and his decision thereupon shall be final, and shall thereafter be observed by the parties hereto.

In witness whereof, the parties hereto have hereunto signed their names and affixed their seals, at the town of Leadville, in the county of Lake, and State of Colorado, the day and date herein aforesaid.

HORACE A. W. TABOR. [SEAL.]
JEROME B. CHAFFEE. [SEAL.]
CHARLES B. BISSELL. [SEAL.]
SIMON H. FOSS. [SEAL.]
ABSALOM V. HUNTER. [SEAL.]

Signed and sealed in presence of us—
ADRIAN WILSON.
GEO. W. TRIMBLE.

And your orators further show unto your honors that in pursuance of the said agreement the parties thereto consolidated their several mining interests and property under and by the name of the Little Pittsburg Consolidated Mining Company, and proceeded to work and operate the same, and in further pursuance of said agreement the proceeds of said mines were transmitted to said First National Bank of Denver, and on or about the first day of each and every month from the date of said agreement the proceeds of said mines and mining property remaining in said bank, after paying all the expenses of operating and working said mines were divided and credited upon the books of said bank, as your
7 orators are advised, and that the amounts placed to the credit of your orators and the said Bissell on the books of said bank are as follows, to wit:

On the 3d day of January, 1879, the sum of	$16,741 66
On the fifth day of February, 1879, the sum of	$24,616 58
On the third day of March, 1879, the sum of	$33,612 33
On the second day of April, 1879, the sum of	$17,531 01
Making the sum total of	$92,501 58

And your orators further aver and state to your honor- that they are, together, entitled to nine-twelfths of said sum of $92,501.58, to wit, the sum of $69,376.18, and that the defendant Bissell is entitled to the residue thereof, three-twelfths, to wit, the sum of $23,125.40.

And your orators further show unto your honors that the said defendant, Charles R. Bissell, not regarding the rights and interests of your orators in the premises, but craftily and subtly intending to injure, harass, and defraud your orators, and to obstruct, hinder, and prevent them from receiving their just share and proportion of the

moneys placed to the credet of your orators and said defendant Bissell in said bank as aforesaid, on or about the 8th day of January, 1879, falsely pretended and represented that he was entitled to seven-twelfths of the moneys credited on the books of said bank to your orators and the said defendant Bissell, when, in truth and in fact, the said Bissell, defendant, is only entitled to three-twelfths thereof,
and your orators are entitled to nine-twelfths thereof, as
8 hereinabove stated and averred by your orators, and that, for
the purpose of consum-ating his wrongful and fraudulent purpose, the said defendant Bissell, on the 8th day of January, A. D. 1879, caused to be served upon the defendant, The First National Bank of Denver, a notice, in the words and figures following, to wit:

DENVER, COLO., *June 8th*, 1879.

To the First Nat'l Bank of Denver:

I hereby forbid the payment of any part or portion of the money deposited with you to the joint credit of Absalom V. Hunter, Simon H. Foss, and myself, as our proportion of the dividend derived from the Little Pittsburg Consolidated Mining Company. There is a contract, signed by each of us, that this money cannot be drawn without the joint signatures of all of us to the order. I claim ($\frac{7}{12}$) seven-twelfths of it. They deny my right to but three-twelfths. Until this dispute is adjusted I cannot consent to the withdrawing of any of it. This $\frac{7}{12}$ but $\frac{4}{12}$ is my own, and the other $\frac{3}{12}$ as agent and att'y for C. J. Reynolds.

Very truly, (Signed) C. R. BISSELL.

And your orators further show unto your honors that on the —— day of ———, 1879, a copy of the above-recited notice was also served
upon your orators, and afterwards, on the 6th day of March,
9 1879, your orators caused a notice and demand of payment
to be served on the said defendant, The First National Bank of Denver, which notice is in the words and figures following, to wit:

"COLORADO SPRINGS, *M'ch 6th*, 1879.

"To the First Nat'l Bank of Denver:

"Whereas a copy of the following notice has been served upon the undersigned:

"'DENVER, COLO., *Jan'y 8th*, 1879.

"'To the First National Bank of Denver:

"'I hereby forbid the payment of any part or portion of the money deposited with you to the joint credit of Absalom V. Hunter, Simon H. Foss, and myself, as our proportion of the dividend derived from the Little Pittsburg Consolidated Mining Company. There is a contract, signed by each of us, that this money cannot be drawn without the joint signatures of all of us to the order. I claim ($\frac{7}{12}$) seven-twelfths of it. They deny my right to but ($\frac{3}{12}$) three-twelfths. Until this dispute is adjusted I cannot consent to the withdrawing of any of it. This ($\frac{7}{12}$) seven-twelfths but ($\frac{4}{12}$) four-

twelfths is my own; the other ($\frac{3}{12}$) three-twelfths as agent and att'y for C. J. Reynolds.

"'Very truly, (Signed) C. R. BISSELL.'

"Now this is to notify you, the said First Nat'l Bank of Denver, Colorado, that we, the undersigned, own ($\frac{9}{12}$) nine-twelfths of the ($\frac{27}{100}$) twenty-seven one-hundred- parts of the Little Pittsburg Consolidated Mining Company, and that the said C. R.
10 Bissell owns only ($\frac{3}{12}$) three-twelfths in said consolidation; that C. J. Reynolds owns no interest in said consolidation; that he is not a party to any of the conveyances or agreements resulting in the consolidation. That said First Nat'l Bank is under no obligations to him, the said C. J. Reynolds, and has no right to withhold on his account any part of the proceeds of the consolidation due the undersigned and now on deposit in said bank, or that may hereafter be deposited therein, to the credit of the undersigned and said C. R. Bissell under and by virtue of said Consolidated Mining Company. That said bank is further notified that by the terms of said C. R. Bissell's notice, copied herein, and by the terms of which he is estopped from claiming more than four-twelfths of said proceeds, that there is no controversy or claim of said C. R. Bissell in his own right for more than ($\frac{4}{12}$) four-twelfths of said amount, and that neither he nor the said C. J. Reynolds can set up any claim under the agreement of consolidation in the behalf or right of the said C. J. Reynolds. Wherefore the undersigned demand payment of ($\frac{8}{12}$) eight-twelfths (the same being due to them in their own right) of the amount on deposit in said bank to their credit jointly with C. R. Bissell, leaving the ($\frac{1}{12}$) one-twelfth in the hands of the bank, as in dispute between the undersigned and said C. R. Bissell, until said dispute is adjusted. The amount hereby demanded as aforesaid being the sum of forty-nine thousand nine hundred and eighty and $\frac{85}{100}$ dollars now in the hands of said bank.

"SIMON H. FOSS.

(Signed) "ABSALOM V. HUNTER."

11 And your orators further show unto your honors that the defendant Bissell, intending to injure and defraud your orators, although often requested, has refused, and still wrongfully refuses, to join with your orators in making any check or order upon the defendant bank for the moneys credited on the books of said bank as aforesaid to your orators and said defendant Bissell, and has forbidden said defendant bank to pay any part thereof to your orators, and notwithstanding the notice and demand served and made by your orators on the defendant bank as aforesaid, and the admission made by the said defendant Bissell, in his notice to said defendant bank that your orators were entitled to five-twelfths of said moneys, yet the said defendant bank, wrongfully and fraudulently conniving with the said defendant Bissell in his wrongful and fraudulent designs against your orators, and with the intent to injure, defraud, and delay your orators in collecting and receiving their just share of said moneys, and with the wrongful

and fraudulent intent to hold and keep the same for its own purposes, hath wilfully and wrongfully refused, and still doth wilfully and wrongfully refuse, to pay to your orators their just share and proportion of the said moneys, or any part and portion thereof, to the great loss, damage, detriment, and inconvenience of your orators, and against equity and good conscience.

In tender consideration whereof, and forasmuch as your
12 orators are remediless in the premises in an action at law, and can only have adequate relief in the premises in this honorable court, where matters of this nature are cognizable and relievable, and to the end, therefore, that the said defendants may, if they can, show cause why your orators should not have the relief herein prayed for, that they be required—the said defendant Bissell upon his corporal oath, and the defendant bank upon the corporal oath of its proper officer—full, true, direct, and perfect answers to make to the several charges and allegations in this bill of complaint set forth, as fully as if the same were here again repeated and the said defendants thereto severally and specifically interrogated, and that the said defendant Bissell may be required to show, if he can, by what title he claims seven-twelfths of the fund aforesaid, and especially that he be required to show the reason (if he can) why your orators should not have any part of the said fund, and why he has forbidden the defendant bank to pay any part of said fund to your orators; and that, upon a full and final hearing of the bill of complaint, the right, title, and interest of your orators and the right, title, and interest of the defendant Bissell to the *to the* said fund then remaining in the defendant bank may be ascertained, adjudged, and determined, and that a decree may be made and
13 judgment rendered against said bank for the payment of such amount to your orators as may be found due to them, and for such further judgments and orders and relief in the premises, pending this suit, as the nature and circumstances of this case, in equity, may require, and to this honorable court may seem meet.

And may it please your honors to grant unto your orators the most gracious writ of subpœna of the United States of America issuing out of and under the seal of this honorable court, directed to the said defendants the "First National Bank of Denver," in the State of Colorado, and Charles R. Bissell, commanding them and each of them on a day certain to be therein named, and under a certain penalty, to be and appear in this honorable court, then and there to answer all and singular the premises, and to stand to, perform, and abide such further order, direction, and decree as may be made against them. And your orators as in duty bound will ever pray, &c.

(Signed) WAGNER, DYER & EMMONS,
Solicitors and Counsel for Complainants

(Signed) SYMES & DECKER,
Solicitors for Complainant.

UNITED STATES OF AMERICA, *District of Colorado:*

Absalom V. Hunter and Simon H. Foss, being duly sworn,
14 deposeth and saith, that they are the complainants in the foregoing bill of complaint named, and have read the same and know the contents thereof. That the said bill is true of their own knowledge, except as to the matters which are therein stated to be on their information and belief, and as to those they believe to be true.

(Signed) SIMON H. FOSS.
(Signed) ABSALOM V. HUNTER.

Subscribed and sworn to before me, this April 26, 1879.
[SEAL.] (Signed) EDWARD F. BISHOP,
Clerk United States Circuit Court.

Endorsed: No. 247. Circuit court U. S. Simon H. Foss and Absalom V. Hunter, plaintiff-, *vs.* The First National Bank of Denver and Charles R. Bissell, def'ts. Bill in equity. Filed Apr. 26, 1879. (Signed) Edward F. Bishop, clerk.

And said subpœna is in words and figures as follows, to wit:

15 *Subpœna.*

The United States of America.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

The President of the United States of America to First National Bank of Denver and Charles R. Bissell, Greeting:

You and every of you are hereby commanded that you appear before the judges of the circuit court of the United States of America for the district of Colorado, at the city of Denver, in said district, on the first Monday in June next (it being the 2d day of June, A. D. 1879), to answer the bill of complaint of Simon H. Foss and Absalom V. Hunter this day filed in the office of the clerk of said court, in said city of Denver, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said bill of complaint, upon pain of judgment being pronounced against you by default, and a decree had and entered accordingly.

To the marshal of ths district of Colorado to execute, and make due return.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, and the seal of the said circuit court for the district of Colorado, at the city of Denver aforesaid, this 26th day of April, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the 103d year.

(Signed) EDWARD F. BISHOP, *Clerk.*

Memorandum.

The above-named defendants are hereby notified that unless they and each of them shall enter their appearance in the office of the clerk of said court, at the city of Denver aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

(Signed) EDWARD F. BISHOP, *Clerk.*

16 *Marshal's Return.*

DISTRICT OF COLORADO, *ss:*

DENVER, *June* 2, A. D. 1879.

I have duly executed the within writ by serving copy on George W. Kassler, assistant cashier of the First National Bank of Denver, at Denver, Arapahoe county, Colorado, on the 27th day of April, A. D. 1879, no president, vice-president, or other officer of the First National Bank of Denver being found—Charles R. Bissell not found in my district.

(Signed) P. P. WILCOX, *Marshal.*

Marshal's fees:

Service	$2 00
Mileage	6
Total	$2 06

Paid by Wagner, Dyer & Emerson, St. Louis, Mo.

Endorsed: Gen. No. 247. Circuit Court of the United States for the district of Colorado. In chancery. Simon H. Foss and Absalom V. Hunter *vs.* First National Bank of Denver and Charles R. Bissell. Subpœna. Returnable to rule day, first Monday in June, A. D. 1879. (Signed) Edward F. Bishop, clerk. Filed this 2d day of June, A. D. 1879. (Signed) Edward F. Bishop, clerk. Wagner, Dyer & Emmons, of St. Louis, compl'ts' sol'r-.

17 And afterwards, and on, to wit, the 1st day of May, A. D. 1879, came L. C. Rockwell, Esq., a solicitor of record of this court, and filed in this court and in this cause his appearance for and on behalf of the said defendant, The First National Bank of Denver.

And said appearance is in words and figures as following, to wit:

Appearance of The First National Bank.

DISTRICT OF COLORADO, *ss:*

In the Circuit Court of the United States for the District of Colorado.

In re. SIMON H. FOSS and ABSALOM V. HUNTER

vs.

FIRST NATIONAL BANK OF DENVER and CHARLES R. BISSELL.

I do hereby certify that I have been retained by, and appear in,

the above-entitled cause for and in behalf of the First National Bank of Denver, one of the above-named defendants.

(Signed) L. C. ROCKWELL.

Dated Denver, Colorado, this 1st day of May, A. D. 1879.

18 Endorsed: No. 247. Circuit court United States, district of Colorado. In the matter of Foss & Hunter *vs.* F'st Nat'l Bank and Bissell. Attorney's appearance: Mr. L. C. Rockwell, on behalf of F'st Nat'l Bank, Denver. Filed this 1st day of May, A. D. 1879. (Signed) Edward F. Bishop, clerk.

And afterwards, and on, to wit, the 17th day of May, A. D. 1879, came W. S. Decker, Esq., a solicitor of record of this court, and filed in this court and in this cause his appearance for and on behalf of the said complainants.

And said appearance is in words and figures as follows, to wit:

Appearance of W. S. Decker, for Complainants.

DISTRICT OF COLORADO, *ss:*

In the Circuit Court of the United States for the District of Colorado.

In re. Foss *et al.*
vs.
1ST NATIONAL BANK OF DENVER *et al.* } No. 247.

I do hereby certify that I have been retained by, and ap-
19 pear in, the above-entitled cause for and in behalf of complainants.

(Signed) W. S. DECKER.

Dated at Denver, Colorado, this 17th day of May, A. D. 1879.

Endorsed: No. 247. Circuit court United States, district of Colorado. In the matter of Foss *et al. vs.* 1st National Bank. Attorney's appearance: Mr. W. S. Decker on behalf of complainants. Filed this 17th day of May, A. D. 1879. (Signed) Edward F. Bishop, clerk.

And afterwards, and on, to wit, the 31st day of May, A. D. 1879, came L. C. Rockwell, Esq., a solicitor in chancery of this court, and files in this court and in this cause his appearance for and on behalf of Charles R. Bissell, one of the said defendants.

And said appearance is in words and figures as follows, to wit:

Appearance of Charles R. Bissell.

DISTRICT OF COLORADO, *ss:*

In the Circuit Court of the United States for the District of Colorado.

In re. SIMON H. FOSS and ABSALOM V. HUNTER
vs.
FIRST NATIONAL BANK OF DENVER, CHARLES R. BISSELL.

I do hereby certify that I have been retained by, and appear in, the above-entitled cause for and in behalf of Charles R. Bissell, one of the above-named defendants.

(Signed) L. C. ROCKWELL,
Att'y for Bissell.

Dated Denver, Colorado, this 31st day of May, A. D. 1879.

Endorsed: No. 247. Circuit court United States, district of Colorado., In the matter of Simon H. Foss and Absalom V. Hunter *vs.* Chas. R. Bissell *et al.* Attorney's appearance: Mr. L. C. Rockwell on behalf of C. R. Bissell. Filed this 31st day of May, A. D. 1879. (Signed) Edward F. Bishop, clerk.

And afterwards, and on, to wit, the 9th day of June, A. D. 1879, came The First National Bank of Denver, one of the said defendants, by L. C. Rockwell, Esq., its solicitor, and filed in said
21 court and in said cause its answer.

And said answer is in words and figures as follows, to wit:

Answer of the First National Bank.

UNITED STATES OF AMERICA, *District of Colorado:*

In the Circuit Court of the United States for the District of Colorado, North Division thereof. May Term, A. D. 1879.

SIMON H. FOSS and ABSALOM V. HUNTER, Complainants,
vs.
THE FIRST NATIONAL BANK OF DENVER and CHARLES R. BISSELL, Defendants.

The several answer of the First National Bank of Denver to the bill of complaint of Simon H. Foss and Absalom V. Hunter, complainants.

This defendant; now, and at all times hereafter, saving and
22 reserving to itself all, and all manner of benefit and advantage of exceptions or otherwise that may or can be had to the many errors, uncertainties, and imperfections in the said bill of complaint contained, for answer thereto or so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says:

I. It admits it is a banking institution, organized and existing

under the national banking act, approved June 3rd, A. D. 1864, and bill supplementary thereto, as set forth in the bill of complaint.

II. It further, answering to said bill of complaint, says it believes it is true that Horace A. W. Tabor, Charles R. Bissell, Simon H. Foss, and Gerome B. Chaffee, and Absalom V. Hunter made and entered into a contract or agreement on the sixteenth day of November, A. D. 1878, which contract or agreement is substantially set forth in the said bill of complaint; and that it is true that under and in pursuance of said contract or agreement the above-named parties united their interests in certain mining property in said instrument described, and worked the same under the name of the Little Pittsburg Consolidated Mining Company, from on or about the said sixteenth day of November, A. D. 1878, up to the time of the commencement of this suit; that the proceeds of said mine were
23 disposed in this defendant's bank, at the city of Denver, Arapahoe county, State of Colorado, from time to time as such proceeds accrued, and that upon the twenty-fifth day of April, A. D. 1879, there was deposited in this defendant's bank, in the city of Denver, the sum of ninety-two thousand five hundred and one dollars and fifty-eight cents ($92,501.58), which belonged, as this defendant is informed and believes, to said Simon H. Foss, Absalom V. Hunter, and Charles R. Bissell.

III. This defendant, further answering said bill of complaint, says that whether Simon H. Foss and Absalom V. Hunter, or either of them, are entitled to nine-twelfths of the said sum of ninety-two thousand five hundred and one dollars and fifty-eight cents, and that said Bissell is entitled to the residue thereof, or the three-twelfths part of said sum, this defendant does not know, and cannot obtain sufficient information upon which to base a belief; therefore it neither admits nor denies said allegations, but leaves the parties to make such proof thereof as lies within their power.

IV. And this defendant, further answering, says that it is true, as in said bill alleged, that on or about the eighth day of January, A. D. 1879, the said Charles R. Bissell served upon this defendant a notice, a copy of which is set forth in said bill of complaint, forbidding the payment of seven-twelfths of said money that was
24 then deposited in said bank. This defendant also admits that upon or about the seventh day of March, A. D. 1879, it was served with a notice, signed by Simon H. Foss and Absalom V. Hunter, a copy of which notice is, this defendant verily believes, correctly set forth in said bill of complaint, whereby eight-twelfths of said money then deposited in this defendant's bank as the proceeds of the Little Pittsburg Consolidated Mining Company, which proceeds belonged to said Bissell, Foss, and Hunter, was demanded to be paid over to the complainants.

V. This defendant, further answering, says it is informed and believes, and so charges the fact to be, that on the twenty-fifth day of April, A. D. 1879, it was agreed by and between said Bissell, Foss, and Hunter that eight-twelfths of the said sum of money so deposited as aforesaid in this defendant's bank should be checked out upon the joint checks of said Bissell, Foss, and Hunter; and that in pursu-

ance of said agreement checks were signed upon the twenty-sixth day of April, A. D. 1879, whereby the sum of sixty-one thousand six hundred and sixty-seven $\frac{12}{100}$ dollars of the said ninety-two thousand five hundred and one dollars and fifty-eight cents was checked out of said bank, leaving four-twelfths of said last-mentioned sum in this defendant's bank.

25 VI. This defendant, further answering, says that it is not true that it has wilfully or wrongfully refused to suffer or permit the said complainants to check out or draw from said bank the money so as aforesaid deposited therein, and it denies that it has wrongfully or fraudulently contracted with or connived with said defendant Bissell in any way or manner whatever, or made any contract or agreement, either express or implied, whereby he, the said Bissell, should refuse to join in a check with said complainants in checking out any part or portion of said money so deposited in this defendant's bank as aforesaid.

VII. This defendant, further answering, says that it is informed and believes that there is a dispute and has been a controversy long existing between said complainants on the one side and its co-defendant, Charles R. Bissell, on the other side, and concerning a certain portion of said sum of money so deposited as aforesaid in this defendant's bank, and that this defendant has no means of knowing which party has the better right or title to said money; that its refusal to permit the drawing of said money by complaints was simply to protect itself against the claims of said Bissell which he was making to the same; that this defendant has never had or claimed any right, title to, or interest in said money, but was merely holding it on deposit, awaiting for said Foss, Hunter, and Bissell to make

26 some ample arrangement or adjustment of and concerning the same; that it has always been willing and still is willing to pay any check, order, or draft which said Bissell, Foss, and Hunter may draw on this fund.

And this defendant denies all and all manner of unlawful combination or confederacy against this defendant in said bill charged, without this that any other matter or thing in the complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, avoided, or denied to the knowledge of this defendant is true; all which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) FIRST NATIONAL BANK OF DENVER,
By GEORGE W. KASSLER, *Ass't Cas.*

UNITED STATES OF AMERICA, }
State of Colorado, County of Arapahoe, } ss:

27 George W. Kassler, of lawful age, being duly sworn according to law, on his oath, says that he is assistant cashier to the First National Bank of Denver, the above-answering

defendant; that he has heard the foregoing answer read, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true; that he is more acquainted and familiar with the facts stated in the foregoing answer than other officer of said corporation, and that this verification is made for and on behalf of said corporation.

(Signed) GEORGE W. KASSLER.

Sworn to and subscribed before me, at Denver, this June 7th, A. D. 1879.

[SEAL.] (Signed) WILLIAM H. SALESBURY,
Notary Public.

Endorsed: No. 247. United States circuit court, district of Colorado. May term, A. D. 1879. Simon H. Foss *et als.*, compl'ts, *vs.* The First National Bank of Denver *et al.*, def'ts. Answer of 1st Nat. Bank of Denver. Filed Jun- 9, 1879. (Signed) Edward F. Bishop, clerk. L. C. Rockwell, Jas. Y. Marshall, sol. for def't.

28 And afterwards, and on, to wit, the 5th day of July, A. D. 1879, came Charles R. Bissell, by L. C. Rockwell, Esq., his solicitor, and filed in said court and in said cause his answer.

And said answer is in words and figures as follows, to wit:

Answer of Charles R. Bissell.

UNITED STATES OF AMERICA, *District of Colorado:*

In the Circuit Courr of the United States of America, for the District of Colorado, Northern Division thereof. To the June Term, A. D. 1879.

SIMON H. FOSS and ABSALOM V. HUNTER, Complainants,
vs.
THE FIRST NATIONAL BANK OF DENVER and CHARLES R. BISSELL, Defendants.

The separate answer of Charles R. Bissell, defendant, to the bill of complaint of Simon H. Foss and Absalom V. Hunter, com-
29 plainants, against The First National Bank of Denver and Charles R. Bissell, defendants.

This defendant, now and at all times hereafter, saving to himself all manner of benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised it is or are material or necessary for him to make answer unto, answering, says:

I. This defendant admits that complainants are citizens of the State of Colorado, and residents thereof; and that this defendant is also a citizen of the State of Colorado, and that his co-defendant, said bank, is a national banking association, established, organized, and incorporated at the city of Denver, in the State of Colorado,

under and in pursuance of the national banking act, approved June 3rd, 1864, and bills supplementary thereto and amendatory thereof. He admits that on the sixteenth day of November, A. D. 1878, he, together with complainants, Horace A. W. Tabor and Jerome B. Chaffee, entered into an agreement, a copy of which, he believes, is correctly set forth in the bill of complaint.

30 He also admits, that in pursuance of said agreement, the parties therein named consolidated their several mining interests and properties, and proceeded to work and manage the same under the title of "Little Pittsburg Consolidated Mining Company," and proceeded to work and operate the same in pursuance of said agreement, and the net proceeds derived therefrom was, from time time, deposited in the First National Bank of Denver, in amounts and at the times as specified in said bill of complaint.

3. This defendant, further answering, says he denies that complainants, or either of them, are entitled to the nine-twelfths of the said sum of ninety-two thousand five hundred and one dollars and fifty-eight cents ($92,501.58), and that he, this defendant, is only entitled to the other three-twelfths thereof; but, on the contrary, he avers the truth to be, that he, this defendant, is entitled to four-twelfths of said sum of ninety-two thousand five hundred and one dollars and fifty-eight cents ($92,501.58), which is the sum of thirty thousand eight hundred and thirty-three dollars and eighty-eight cents, and that complainants are entitled to the residue of said ninety-two thousand five hundred and one dollars and fifty-eight cents.

3. This defendant, further answering, says he denies that he has not regarded the rights and interests of the complainants in

31 the premises, and denies that he has craftily or subtley, or otherwise intended to injure, harass, or defraud complainants, or either of them, or obstruct, hinder, or prevent them from receiving their just share and proportion of the moneys placed to the just credit of complainants and this defendant in the First National Bank of Denver as aforesaid.

4. This defendant, further answering, says he admits that on or about the eighth day of January last he represented to said bank that he was entitled to four-twelfths of this money in his own right, and that he did give to said bank a notice in writing, a copy of which is, as he verily believes, set forth in said bill of complaint; that he believes it is true that shortly after the eighth day of January last a copy of the above-mentioned notice was served upon said complainants, and each of them, at the request of this defendant.

5. This defendant, further answering, says that he is ignorant of the fact, and has no knowledge, information, or belief as to whether said complainants, or either of them, on or about the sixth day of March last, or at any other time, served upon his co-defendant, said bank, the notice, a copy of which is given or set forth in the said bill of complaint; and neither admits nor denies the same,

32 but on the hearing of this cause will demand strict proof thereof.

6. This defendant, further answering, says it is not true that he

has wrongfully refused to join with complainants in making a check or draft upon said bank for the money credited upon the books of said bank as aforesaid, as in and by said bill of complaint is stated; but he avers the truth to be that no request was made upon him by said complainants, or either of them, or anybody for them, to join with them in any check or draft upon said money, from the time the first amount was deposited therein up to, on, or about the twenty-fourth day of April last; that during all that period of time, from the time the respective amounts were placed in said bank to the just credit of complainant and this defendant as aforesaid, did the complainants, or either of them, manifest any desire, to his knowledge, to have the same drawn out. That upon the eighth day of January last, or about that time, and at the same time that complainants were informed that he claimed this four-twelfths of the money so deposited, and to be thereafter deposited, as the net proceeds of the money received from the joint workings of said mines, he notified

33 said complainants in writing that Lewis C. Rockwell was authorized and empowered by him [to] unite and join with them in checking out the five-twelfths of all of such monies at any time they desired to draw the same, and that said complainants, or either of them, never made known any desire on their part, to said Rockwell, or never asked him to unite with them in checking out said money, until on or about the twenty-fourth day of April last, at which time they applied to said Rockwell, and asked him to permit them to draw their proportion of the money, equal to five-twelfths thereof, to be drawn, at which time said Rockwell did unite with complainants, and drew out of said bank for complainants the sum of thirty-eight thousand five hundred and forty-two dollars, and at the same time there was drawn for this defendant the sum of twenty-three thousand one hundred and twenty-five dollars and forty cents, leaving the seven-twelfths of said ninety-two thousand five hundred and one dollars and fifty-eight cents to be thereafter disposed of as the parties might agree; and afterwards, and on or about the twenty-third day of May last, this defendant in person united with said complainants, and drew from said bank three-twelfths more of said ninety-two thousand five hundred and one dollars and fifty-eight cents, leaving in said bank only one-twelfth of said sum, which sum still remains there, and is the subject-matter of this controversy.

7. This defendant, further answering, says that on or about

34 the fifteenth day of April, 1878, he and the complainants purchased one undivided three-fourths interest in and to the Winnemuck lode, of and from George Davidson and William H. Van Bexall; that after said purchase said Davidson, Van Bexall, complainants, and this defendant work and mined said Winnemuck lode, as joint owners thereof, until the twenty-seventh day of July, 1878, at which time said Davidson and Van Bexall sold and conveyed all their right, title, and interest in and to said Winnemuck lode, which was an undived one-fourth, over to Edward H. Handley, Amos B. Rawlings, and George W. Robertson, and gave them a deed therefor which was, subsequent to its date, recorded in the office of the clerk

and for Lake county, Colorado; that after this last purchase said complainants, this defendant, and said Handley, Rawlings, and Robertson continued to work said Winnemuck mine, as joint owners thereof, until the first day of October, 1878, at which time said complainants and this defendant purchased (as hereinafter stated) of and from said Rawlings, Robertson, and Handley all their right, title, and interest in and to said Winnemuck mine, which was an undivided one-fourth part thereof, for the sum of fifteen thousand dollars; but the deed from the last-named parties was wrongfully given to and taken by said Simon H. Foss for said Absalom V. Hunter and this defendant (as hereinafter stated); that in this said
35 purchase, through the efforts of this defendant, the price at which said Handley, Rawlings, and Robertson sold their undivided one-fourth interest in said Winnemuck lode was reduced from thirty to fifteen thousand dollars; that after said purchase said complainants and this defendant continued to work and mine said Winnemuck lode as joint owners thereof, until the sixteenth day of November, 1878, when their interest in this Winnemuck lode was consolidated with their interest in the New Discovery lode, and with the interests of Jerome B. Chaffee and Horace A. W. Tabor in the Little Pittsburg dives and New Discovery lodes; that after said Foss had taken this conveyance from said Handley, Rawlings, and Robertson to himself for their one undivided one-fourth interest in and to said Winnemuck lode, to wrong and defraud this defendant out of his just interest in and to said one-fourth interest, which was an undivided one-twelfth thereof, said Foss and Hunter, combining and confederating with one George W. Trimble (who claims to have some interest in the money which is the subject-matter of this suit), began wrongfully to claim to him, and pretend he had no right, title, or interest in or to this undivided one-fourth so as aforesaid purchased from said Handley, Rawlings, and Robertson. This defend-
ant further shows that said Foss wrongfully, artfully, and
36 deceitfully took advantage of the reduction of said price from thirty to fifteen thousand dollars, and combined, confederated, and so contrived with his co-complainant and said Trimble that said Hunter should ostensibly, and to the world likewise, appear to sell his interest to said Foss for the same sum in proportion as said Rawlings, Handley, and Robertson were selling for, and he, said Hunter, joined in making this deed to said Foss; but as a matter of fact it was understood and agreed before said Hunter joined in the making of said deed between himself, said Foss and Hunter, that he, Hunter, was not to loose his right, title, or interest in or to said lode, or in any part or portion thereof; but just as soon as said title passed from said Handley, Rawlings, and Robertson unto said Foss, that he, said Foss, should reconvey back to said Hunter his right, title, and interest in and to said premises, which he subsequently did do, in pursuance with said agreement; that when this defendant was negotiating for said premises he was acting in good faith—for the benefit of said complainants and himself jointly; that to take advantage of this reduction in price of fifteen thousand dollars, and to keep this defendant in ignorance of their schemes, said Foss and

Hunter induced said Rawlings, Handley, and Robertson to go from Leadville where they lived, and all parties resided, to Colorado
37 Springs, and as this defendant is informed and believes, and so charges the fact to be, did pay or attempt to pay this fifteen thousand dollars, being the purchase price of said property, to said Handley, Robertson, and Rawlings at the last-named place to keep this defendant in ignorance of what was taking place between them. But this defendant further avers that at this time said complainants, Handley, Rawlings, Robertson, and this defendant had and kept the proceeds derived from working said Winnemuk lode in the Mining Exchange Bank of Leadville to a joint account, and there was sufficient money, as this defendant is informed (by said Trimble, who was then and still is the cashier of said bank) and believes, in said bank which then rightfully belonged to said Handley, Rawlings, and Robertson as their due proportion, after paying all just debts for working and operating said mine, to pay for this one-fourth interest to within three thousand dollars or thereabouts. That this defendant had also at this time in said bank a private account, to the credit of which there was enough money to pay for his due proportion of this deficit of three thousand dollars. But to make it appear that the purchase was made by said Foss individually, the matter was attempted to be closed at Colorado
38 Springs, but, as affiant is informed and believes, it was always understood and agreed by and between said Foss, Hunter, and Trimble that this money so deposited to the joint account of said complainants, this defendant, Robertson, Handley, and Rawlings, in said bank, as the proceeds from this said Winnemuk lode should be and was really applied to purchase this said interest. That this defendant learned from said Rawlings, on the evening of the first day of October last, and previous to the paying this money over to said parties by Foss (if the same was paid at Colorado Springs), that the contract for the purchase had been made, and defendant then told said Foss he was ready and willing to pay his proportion of said fifteen thousand dollars, and should insist on his proportion of the property, being an undivided one-twelfth thereof, whereupon said Foss replied he would see about it; that ever since then this defendant has been willing to pay, and still is willing to pay, said Foss his due proportion of said fifteen thousand dollars, with interest thereof at ten per cent. per annum from October 1st, 1878, until this time. This defendant further says that said Foss, just previous to this defendant's efforts to aid in the purchase of this interest, urged defendant to aid him, Foss, to raise the thirty thousand dollars and purchase this property for said complainants and this defendant, at the same time
39 saying a large amount of the sum was then in the bank, and could be used for that purpose. That this defendant then represented to said Foss this one-fourth interest could be purchased for a much less sum, and by and through the efforts of this defendant with said Handley, Rawlings, and Robertson the price was reduced to fifteen thousand dollars. That ever since said Foss took said deed, on October 1st, 1878, for this interest, up to the time of

this consolidation, he held the undivided twelfth part of this one-fourth interest, as trustee for this defendant. That after this consolidation the said trustee, under the said deed, held such interest for the use and benefit of this defendant, and he is entitled to the one-twelfth ($\frac{1}{12}$) of this twenty-seven one-hundredths ($\frac{27}{100}$) of the net proceeds of these consolidated properties, in addition to the three twelfths ($\frac{3}{12}$) thereof, as conceded to be his by complainant, which makes this defendant's interest therein four-twelfths ($\frac{4}{12}$) of said twenty-seven one-hundredths ($\frac{27}{100}$) of these consolidated properties. That from the first day of October, 1878, up to the eighteenth day of November of that year, said Winnemuk lode produced a large sum of money, the exact amount of which defendant cannot state, as the books containing said statements are in the hands of said complainants and said Trimble, or in the hands of one of
40 them; but this defendant says the sum of money so received as the net proceeds of said Winnemuk lode, between the last-named dates, was not less than fifty thousand dollars, the four-twelfths of which net proceeds justly and properly belonged to this defendant; but said complainants wrongfully claim this defendant has no right, title, or interest therein, save as to three-twelfths thereof, and that the other twelfth belongs to them.

8. This defendant, further answering, says said Hendley, Rawlings, and Robertson were entitled to and owned one-fourth of all the money received by them, together with complainants and this defendant, as the proceeds from working said Winnemuk lode. That on said first day of October last there was not less than twelve thousand dollars in said Miners' Exchange Bank, so belonging to said Handley, Rawlings, and Robertson, as this defendant is informed and believes. That at and before that time, owing to certain disputes which had sprung up between Horace A. W. Tabor, August Richie, and George H. Hook, on the one side, and complainants, this defendant, Rawlings, Handley, and Robertson, on the one side, regarding the ownership of the ore and mineral taken from said Winnemuk lode, all the ore and mineral mined and taken therefrom by the last-named parties was attached by said Tabor, Richie,
41 and Hook, and the former-named parties gave bond and had the same released. And inasmuch as said complainants and this defendant had to find and give all security in the bonds for releasing such ore, and run all the risks of becoming liable on said bond, as this defendant is informed and believes, and so charges the fact to be, all the money in said bank at the time of said purchase — Foss belonging to said Rawlings, Handly, and Robertson from the workings of said mine was, in consideration of said fifteen thousand dollars, to belong to and become the money of complainants and this defendant, and said Handley, Rawlings, and Robertson then and there relinquished all their right, title, and interest therein.

9. This defendant, further answering, says he never drew from said bank, neither did he receive any benefit from any of the money derived from this one-fourth interest, so as aforesaid owned by said Handley, Rawlings, and Robertson, but that said complainants and

said Tremble have taken all of said money and wrongfully appropriated and converted the same to their own use and benefit, which amounts so taken and appropriated exceeds by far the fifteen thousand dollars, so as aforesaid paid to said Handley, Rawlings, and Robertson for their interest in and to said Winnemuk lode, the one-
third part of which justly and of right is and was the money
42 of this defendant.

Wherefore defendant asks:

First. That he be decreed to have been the owner of the undivided one-third of the undivided one-fourth part of the interest, so as aforesaid pretended to have been purchased by said Foss from said Handley, Rawlings, and Robertson, and that one-third of all the money received as net proceeds from this said one-fourth interest be decreed to belong to and be the money of this defendant.

Second. That said bank be ordered and directed to pay said money over to this defendant, and he be adjudged the legal owner thereof.

Third. That said Foss be adjudged to have been the trustee of this defendant, so far as the said undivided third part of said one-fourth part of said Winnemuk lode is concerned, and that under the terms of said purchase said Foss was but the trustee of this defendant as to said interest, and that all the money theretofore or thereafter deposited in the said Miners' Exchange Bank of Leadville, in the common fund to the credit of complainants, this defendant, Handley, Rawlings, and Robertson, or to the credit of that account, under whatever name or style the same was kept in said bank and at previous to the
day of said purchase by said Foss, and from that time onward,
43 that the undivided one-third of the one-fourth part thereof
be adjudged and decreed to belong to and be the property of this defendant; and that such money, or so much thereof as may be necessary, be taken and applied as a payment by this defendant to said Foss and his co-conspirators therein on the purchase of said one-twelfth part of the fourth of said interest of said Handley, Rawlings, and Robertson, which they attempted to sell and convey to said Foss in October last.

Fourth. That this defendant may have such other and further relief in the premises as may be agreeable to equity and good conscience.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this that there is any other matter, cause, or thing in the complainants' said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges
in their behalf most wrongfully sustained.

44 (Signed) CHARLES R. BISSELL.
(Signed) L. C. ROCKWELL,
Sol. for Def't.

UNITED STATES OF AMERICA, }
State of Colorado, County of Arapahoe, } *ss:*

Charles R. Bissell, of lawful age, being first duly sworn, deposes and says: He is the above-named defendant; that he has heard the foregoing answer read and knows the contents thereof, and that the same is true of his own knowledge, except those matters and things therein stated on information and belief, and as to those he believes it to be true.

(Signed) CHARLES R. BISSELL.

Subscribed and sworn to before me, this 26th day of June, 1879.

[SEAL.] (Signed) JOHN W. WEBSTER,
Notary Public.

Endorsed: 247. Simon H. Foss & Absalom V. Hunter *vs.* Charles R. Bissell & First Nat. Bank. Answer of Chas. R. Bissell. Filed Jul. 5, 1879. (Signed) Edward F. Bishop, clerk. L. C. Rockwell, sol. for Chas. R. Bissell.

45 And afterwards, and on, to wit, the 7th day of July, A. D. 1879, came the said complainants, by D. P. Dyer, Esq., their solicitor, and filed in said court and in said cause their replication to the answer of the said defendant, Charles R. Bissell.

And said replication is in words and figures as follows, to wit:

Replication to Answer of Chas. R. Bissell.

UNITED STATES OF AMERICA, *District of Colorado:*

In the Circuit Court of the United States for the District of Colorado.

SIMON H. FOSS and ABSALOM V. HUNTER, Complainants,
v.
THE FIRST NATIONAL BANK OF DENVER and CHARLES R. BISSELL, Def'ts.

Simon H. Foss and Absalom V. Hunter, the above-named complainants, for reply to the answer of Charles R. Bissell filed
46 herein, say they admit the payments by the bank, as stated therein, since the commencement of this suit, but as to the other matters and things stated complainants deny the same. Wherefore they pray judgment as before.

(Signed) D. P. DYER,
Solicitor for Complainants.

Endorsed: 247. Circuit court U. S. Simon H. Foss and Absalom V. Hunter, complainants, *vs.* The First National Bank of Denver and Charles R. Bissell, def'ts. Reply to the answer of Bissell. Filed Jul. 7, 1879. (Signed) Edward F. Bishop, clerk.

And afterwards, and on, to wit, the 1st day of December, A. D. 1879, came the said complainants, by D. P. Dyer, Esq., their solicitor,

and filed in said court and in said cause a stipulation for the hearing of this cause.

And said stipulation is in words and figures as follows, to wit:

Stipulation as to Hearing.

UNITED STATES OF AMERICA, *District of Colorado:*

47 In the Circuit Court of the United States for the District of Colorado, Northern Division.

SIMON H. FOSS & ABSALOM V. HUNTER, Complainants,

vs.

THE FIRST NATIONAL BANK OF DENVER and C. R. BISSELL, Defendants.

THE FIRST NATIONAL BANK OF DENVER, Complainant,

vs.

SIMON H. FOSS, ABSALOM V. HUNTER, and CHARLES R. BISSELL, Defendants.

It is agreed and stipulated that the court may set the above causes for hearing at any time during the month of January, 1880, and after the 5th day of said month, as may be most convenient to said court. If the court should for any cause adjourn before that date, the same may be heard by the judge in chambers, and his judgment entered as of the present term. Any objection to the

48 evidence on either side may be heard at the time the case is heard on the merits.

Dec. 1, 1879.

(Signed) D. P. DYER,
Att'y for Complainants, Foss & Hunter, & For Def'ts, Foss & Hunter.

(Signed) L. C. ROCKWELL,
Att'y for Bissell & the Bank.

Endorsed: No. 247. Simon H. Foss & Absalom V. Hunter, complainants, *vs.* The First Nat. Bank of Denver and C. R. Bissell, def'ts. The First Nat. Bank of Denver, complainant, *vs.* Simon H. Foss *et al.*, def'ts. Stipulation as to hearing. Filed Dec. 1, 1879. (Signed) Edward F. Bishop, clerk.

And afterwards, and on, to wit, the 6th day of December, A. D. 1879, came the said defendants, by L. C. Rockwell, Esq., their solicitor, and filed in said court and said cause a motion to dismiss the same.

And said motion to dismiss is in words and figures as follows, to wit:

Motion to Dismiss.

UNITED STATES OF AMERICA, *State of Colorado:*

49 In the United States Circuit Court, District of Colorado.

SIMON H FOSS and ABSALOM V. HUNTER, Compl'ts,
ag'st
CHARLES R. BISSELL and FIRST NAT. BANK OF DENVER, Def'ts. } Original Bill.

FIRST NATIONAL B'K OF DENVER, Compl't,
ag'st
SIMON H. FOSS, ABSALOM V. HUNTER, and CHARLES R. BISSELL, Def'ts. } Bill of Interpleader.

Now comes Charles R. Bissell and the First National Bank of Denver, and moves the court to dismiss the original bill and the bill of interpleader, and for this motion the following reasons are assigned:

1st. Because the pleadings show all the parties to this litigation are residents and citizens of the State of Colorado, and were such at the time this suit was brought.

2d. Because the pleadings show this litigation is really between Foss and Hunter on the one side and Bissell on the other, and it is alleged they are citizens of this State, and were such at the time this action was brought.

(Signed) L. C. ROCKWELL,
50 *Att'y for Bissell and First Nat. Bank.*

Endorsed: 247. In U. S. circuit court. Foss & Hunter *vs.* Chas. R. Bissell *et al.* Motion to dismiss the case. Filed Dec. 6, 1879. (Signed) Edward F. Bishop, clerk. Rockwell & Bissell, att'y for def't.

And afterwards, and on, to wit, the 8th day of March, A. D. 1880, there was filed in said court and in said cause the opinion of the Honorable George W. McCrary, circuit judge, on the said defendants' motion to dismiss.

And said opinion is in words and figures as follows, to wit:

Opinion of McCrary, C. J., on Motion to Dismiss.

In the Circuit Court of the United States, District of Colorado.

SIMON H. FOSS and ABSALOM V. HUNTER
vs.
THE FIRST NATIONAL BANK OF DENVER and CHARLES R. BISSELL. } Bill in Equity.

51 THE FIRST NATIONAL BANK OF DENVER
vs.
SIMON H. FOSS, ABSALOM V. HUNTER, and CHARLES R. BISSELL. } Cross-Bill.

First. The Federal courts have jurisdiction over all suits by and against national banks irrespective of the subject-matter.

Second. Joining merely nominal or formal parties has no effect either to confer or exclude the jurisdiction. But trustees, executors, and the like are not formal parties within the meaning of the rule, where in fact interested in the litigation. Accordingly, where two or three persons claiming a certain fund which was in the custody of a national bank, brought its bill in equity against the bank, and a third claimant, and *and* the bank exhibited its cross-bill praying that the parties might interplead, this was held to confer jurisdiction, although but for such cross-bill the jurisdiction was doubted.

McCRARY, *Circuit Judge.*

This controversy relates to a fund, which under a written agreement between Simon H. Foss, Absalom V. Hunter, and Charles R. Bissell, was deposited to their joint credit, with the First National Bank of Denver. The money can be drawn from the bank
52 only upon the joint check of the said Foss, Hunter, and Bissell, and a dispute having arisen between them as to their respective shares thereof, no joint check has been signed.

On the 8th of Jan'y, 1879, defendant Bissell gave notice in writing to the bank that he claimed seven-twelfths of the fund, and that until his claim was adjusted he objected to the payment of any part of the fund to the other claimants on the 6th of March following; the plaintiffs in the original bill, Foss and Hunter, served a written notice on the bank, claiming to own nine-twelfths of said fund, and declaring that said Bissell was entitled to three-twelfths only, and they demanded of the bank payment of eight-twelfths of the amount on deposit, leaving in the hands of the bank one-twelfth as in dispute between them and Bissell. It also appears from an inspection of these notices that Bissell claims four-twelfths of the fund in his own right, and three-twelfths as agent and attorney for one C. J. Reynolds, and that Foss and Hunter deny all claim on behalf of said Reynolds.

The plaintiffs in the original bill, Foss and Hunter, instituted this proceeding in order to settle the controversy as to the proper division of the fund, and pray decree directing payment to them of their alleged share, to wit, eight-twelfths thereof. Defendant Bissell answers claiming in his own right, and as representing J. C. Reynolds to be entitled to seven-twelfths.
53 The bank answers, among things, that it has no interest in the fund, and is only holding it as a depository, and does not know to which of the claimants it ought of right to render and pay the same.

Of the cross-bill filed by the bank I will speak presently.

The defendant Bissell moves to dismiss for want of jurisdiction. The motion is urged upon the ground that all the parties are shown by the bill to be citizens of the State of Colorado, and that there is no jurisdiction under the nat'l bank act, because the First National Bank of Denver appears by the record to be only a nominal party, without interest in the litigation.

1st. It may be regarded as settled that national banks may sue and be sued in the Federal courts by virtue of the provisions of sec.

629 of the Revised Statutes of the United States, which provides as follows:

"SEC. 629, jurisdiction. The circuit courts shall have original jurisdiction as follows:

* * * * * * *

"Tenth. Of all suits by or against any banking association established in the district for which the court is held, under any law providing for national banking associations."

54 First National Bank of Omaha *vs.* County of Douglas, 3 Dillon, 298.
Bank of Bethel *vs.* Panqueoque Bank, 14 Wall., 395.
Kennedy *vs.* Gibson *et al.*, 8 Wall., 498.

Under a similar provision of the charter of the Uniten States Bank of 1816 a question was made as to the power of Congress to confer jurisdiction upon a Federal court in a case not necessarily involving the construction or the validity of a law of the United States, or of some provision of the Constitution, or of a treaty. This question was raised upon the second section of the third article of the Constitution, which limits the judicial power of the United States to "cases in law and equity arising under this Constitution the laws of the United States, and treaties made or which shall be made under their authority." And it was claimed that a case against a bank of the United States was not necessarily a case arising under a law of the United States. But the Supreme Court, in the case of Osborn *vs.* United States Bank, 9th Wheaton, 738, in which an elaborate opinion was delivered by Chief Justice Marshall, held that the act of Congress conferring jurisdiction upon the circuit courts in all suits, by or against such banks, irrespective of the subject-matter, was constitutional.

This ruling applies with full force to the construction of the above quoted provision of the Revised Statutes.

2d. It seems to be well settled that the joining in a suit of
55 merely nominal or formal parties can have no effect either in confer-ing or excluding jurisdiction.
Brown *vs.* Strode, 5 Cranch, 303.
Wormly *vs.* Wormly, 8 Wheat., 421.
Wood *et al. vs.* Davis, 18 How., 467.

Trustees and executors do not belong to this class. They are, although suing for others, the real prosecutors of the suit. They are parties to the contract.

McNutt *vs.* Bland, 2 How., 10.
Knapp *vs.* R. R. Co., 20 Wall., 117.

In the latter case, which was a suit by a trustee, the court said: "He is not a mere passive instrument in the litigation; on the contrary, he is active in prosecuting it, and would be remiss in his duty if he failed in using all proper means to bring it to a successful issue. As the cause of action is vested in him the court looks to his citizenship in determining the question of jurisdiction, and not to the resi-

dence of those persons who are beneficially interested in the subject-matter of the litigation." McNutt *vs.* Bland was a suit on the official bond of a sheriff executed to the Governor of the State. The action was brought in the name of the Governor of Mississippi against a citizen of that State, but for the use of citizens of another State. The jurisdiction was upheld upon the ground that the Governor was a nominal party only, the court observing, that "in
56 no just view of the constitution or law can he be considered a litigant party, both look to things not names, to the actors in controversies and suits, and not to the mere forms or inactive instruments used in conducting them in view of some positive law."

Upon the authority of these, and other similar cases, I conclude that where jurisdiction is dependent upon the parties to the suit we are to look to the real and not to the merely nominal or formal parties.

Where suit is brought against a national bank, by virtue of the statute under consideration it must appear that the bank is a real active party to the litigation in order to maintain the jurisdiction.

If the case stood upon the original bill and answer I should entertain grave doubts as to jurisdiction. It could, in that case, be upheld, if at all, only upon the ground that the proceeding, if conducted to a termination, will result in a judgment against the bank.

3d. But the bank itself has chosen, by its cross-bill, to invoke the aid and protection of this court as a court of equity; and I will now consider whether it has, in this way, brought the controversy within the jurisdiction.

The circuit courts have jurisdiction of suits instituted by national banks in equity as well as at law; and the question to be de-
57 termined is, whether the cross-bill in this case may be regarded as, in itself, constituting a suit within the meaning of the equity rules and practice prevailing in this court.

The cross-bill is filed by the bank against all the claimants of the fund in question, and it sets out the facts already referred to in this opinion. It also avers that plaintiff in the cross-bill is a national bank organized and existing under the national banking act, approved June 3d, 1864, and amendatory acts, doing business at Denver, Colorado, within this district. It sets forth the fact of the filing of the original bill in this case, and the substance of the allegations therein, as well a statement of the conflicting claims and demands upon said fund of Foss and Hunter on one side, and Bissell on the other. Concerning the fund in dispute the cross-bill sets forth that "the same is now in the bank of your orator, which sum your orator is informed and believes is in dispute between the said Bissell on the one side and the said Foss and Hunter upon the other; that each party demands the right to own said sum of money last above stated; that your orator claims no right, title, or interest in or to the same, but is merely holding it as a depositary or stakeholder, and does not know to which of the claimants he ought of right to render and pay the same.

And your orator further represents and shows to the court that it is under no liability to either said Foss and Hunter or said Bis-

sell, beyond that which arises to the title to the money so deposited in its bank.

58 Said Bissell on the one hand, and Foss and Hunter on the other, demand that your orator should pay such money over to them, but they refuse to join in a joint check, or order, in checking the same out.

That your orator has doubts as to which of said parties really own said money, and that it cannot safely pay or render it to one party without being made liable for the same debt to the other," &c.

The prayer is that defendant may be required to interplead, and settle or adjust between themselves their right or claim in or to the disputed fund, the bank declaring its readiness to pay in accordance with the decree of the court.

It is well settled that a trustee or bailee, who is sued or in danger of being sued by several claimants of the same property, may have relief by filing a bill to compel them, by the authority of a court of equity, to interplead and settle their dispute in one suit. This rule is based upon the ground that such a proceeding relieves the bailee or depository from being harassed by suits in which he has no interest. And it is especially applicable to a case "where two or more persons severally claim the same thing under different titles, or in separate interests, from any other person, who, not claiming any title or interest therein himself, and not knowing to which of the claimants he ought of right to render the debt or duty claimed,

59 or to deliver the property in his custody, is either molested by an action or actions brought against him, or fears that he may suffer injury from conflicting claims of the parties." 2 Story Eq. Jur., Sec. 806. The proceeding may be instituted not only to secure for the bailee or depository protection against being compelled to pay or deliver the thing claimed to both claimants, but also to relieve him from the vexation attending upon the suits which are, or may be, instituted against him. For a full discussion of the whole subject see 2 Story's Eq. Jur., secs. 801 to 813*b*, inclusive, and cases cited in notes.

The doctrine has been applied to the case of a bank having possession of funds claimed by adversary parties, which is this case. The City Bank of New York *vs.* Suelton, 2 Blatchford, 14.

4th. The remedy in such a case is, as will be seen from an examination of the foregoing authorities, by bill of interpleader, which is an original bill filed by a person who claims no interest in the subject-matter in opposition to the persons against whom the bill is exhibited, but prays the decree of the court touching the rights of those persons for the safety of the plaintiff in the bill. (Story Eq. Pl., sec. 18.) The remedy is here sought by means of a cross-bill filed in a case already commenced; but, upon examining this pleading, I find that it is, in substance, and in everything but name, an original bill of interpleader, and I am of the opinion that for the purposes of this motion it may be regarded as an original suit brought

60 by the bank in the nature of a bill of interpleader against the several claimants of the fund in controversy. It was filed before answering the original bill, and it contains all the substantial

allegations of a bill of interpleader, including a prayer for process and for relief. (Story Eq. Pleading, chap. 6.) In form the bill, considered as a bill of interpleader, may be slightly defective, but in substance it is sufficient, and in considering the question of jurisdiction we will look to the substance rather than to the form. As the whole controversy is presented by the cross-bill, and can be settled thereunder, I have no hesitation in holding that this court has jurisdiction, and the motion to dismiss is accordingly overruled.

(Signed) GEO. W. McCRARY,
Circuit Judge.

Endorsed: No. 247. Circuit court U. S. Simon H. Foss and Absalom V. Hunter *vs.* The First National [Bank] of Denver *et al.* Opinion, McCrary, C. J., on motion to dismiss. Filed Mar. 8, 1880.
(Signed) Edward F. Bishop, clerk.

61 And afterwards, and on the same day, to wit, the 8th day of March, A. D. 1880, the same being a day in vacation, before the May term, A. D. 1880, at chambers, before the Honorable George W. McCrary, circuit court, the following order was made and entered of record in said cause, to wit:

Order Denying Motion to Dismiss.

SIMON H. FOSS AND ABSALOM V. HUNTER
vs.
FIRST NATIONAL BANK OF DENVER *et al.*
} 247. In Chancery. Bill.

THE FIRST NATIONAL BANK OF DENVER
vs.
SIMON H. FOSS *et al.*
} Cross-Bill.

The motion of the said defendants in the original bill to dismiss this said bill of complaint and the bill of interpleader herein having heretofore come on to be heard, at chambers, at Keokuk, Iowa, before the Honorable George W. McCrary, circuit judge, upon the briefs of the respective parties, and the said circuit judge being now fully advised in the premises—

It is ordered by the said circuit judge that the said motion be denied.

62 And afterwards, and on, to wit, the 5th day of May, A. D. 1880, there was opened, published, and filed in said court and in said cause the deposition of William H. James, taken before Robert H. Buck, a United States commissioner for and on behalf of the said defendant, Charles R. Bissell.

And said deposition is in words and figures as follows, to wit:

Deposition of Wm. H. James.

The deposition of William H. James, of the county of Lake and State of Colorado, a witness of lawful age, produced, sworn, and examined upon his corporal oath, on the twenty-ninth day of April,

A. D. 1880, at the office of Robert H. Buck, in the city of Leadville, in the county of Lake and State aforesaid, by me, Robert H. Buck, a commissioner duly appointed by a *dedimus potestatum*, issued out of the clerk's office of the circuit court of the United States for the district of Colorado, bearing teste in the name of the Chief Justice of the United States, and the seal of said court affixed thereto, and to me directed as such commissioner for the examination of the said William H. James, and of Nelson Hallock and Edward Eddy, witnesses in a certain suit and matter in controversy now pending and undetermined in the said circuit court, wherein Simon H.
63 Foss and Absalom V. Hunter are plaintiffs and Charles R. Bissell and The First National Bank of Denver are defendants in the original bill, and The First National Bank of Denver is the plaintiff and Simon H. Foss, Absalom V. Hunter, and Charles R. Bissell are defendants in the cross-bill, in behalf of the said Charles R. Bissell, defendant, as well on the cross-interrogatories of the plaintiffs as upon the interrogatories of the defendant, Bissell, which were attached to the said commission, and upon none others. The said WILLIAM H. JAMES, being first duly sworn by me as a witness in said cause previous to the commencement of his examination to testify the truth as well on the part of the plaintiffs as the defendants, in relation to the matters in controversy between the said plaintiffs and defendants so far as he shall be interrogated, testified and deposed as follows:

Interrogatory 1. State your name, age, occupation, and place of residence.

Ans. William H. James; age, 42 years; residence, Leadville, Colorado; occupation, ore merchant and smelter.

Int. 2. Were you a member of the firm of Eddy and James in the summer and fall of 1878?

Ans. I was.

Int. 3. Did you at that time know Nelson Hallock?

Ans. I did.

Int. 4. State whether or not the firm of Eddy and James purchased, treated, or sampled any ore mined from the Winnemuk lode in the summer and fall of 1878, while Charles R. Bissell,
64 Absalom V. Hunter, Simon H. Foss, George W. Robertson, and Edward Handley, and Amos Rollins, or either or any of them, were working and mining said Winnemuk lode and property. If yea, state whether or not your firm ever delivered to Nelson Hallock any moneys, check, or evidence of indebtedness for said Bissell, Foss, Hunter, Robertson, Rollins, and Handley, or for either or any of them. If you answer yes, state amount of check or evidence of indebtedness, and by whose order or direction you so delivered the same, and when it was delivered, and, if you know, for what purpose said Hallock received said check or evidence of indebtedness.

Ans. We did purchase and sample ores from the Winnemuk mine during the time enquired of, while the parties named were working the property. I presume the ores were mined from that mine, as we bought them from that mine. We did deliver to Nelson Hallock our check for ten thousand dollars, some time in November, 1878.

It was delivered to Hallock by order of Bissell, Foss, and George W. Trimble, as I remember. Hallock received the check in payment for ore delivered from the Eureka mine, or in part payment therefor. It was in part payment.

Int. 5. If in answer to the last interrogatory you say that the firm of Eddy and James delivered to said Hallock a check or other evidence of indebtedness for some $12,000 for and on behalf of said Bissell, Foss, and Hunter, or any of them, state if you know
65 where the ore came [from], or in whose name it was delivered to you, from which that money was derived, or for which that money or other evidence of indebtedness was given in payment. State fully and particularly.

Ans. The ore came from the Eureka mine. It was delivered to us in the name of Bissell, Foss, Hunter, and the other parties above named—that is, Robertson, Handly, and Rollins.

Int. 6. State whether or not you delivered, in the summer and fall of 1878, at the request of either Bissell, Foss, or Hunter, to any other person than said Nelson Hallock any moneys or property or evidence of indebtedness belonging to said Bissell, Foss, and Hunter, Robertson, Rollins and Handley, or any of them, as the money derived from the purchase of ore from the Winnemuk lode, for the purpose of securing or indemnifying any such person for signing or going upon any bond of indemnity or otherwise given in any legal proceeding, wherein H. A. W. Tabor, August Rische, and George W. Hook, or either of them, were plaintiffs *vs.* said Bissell, Foss, Hunter, Robertson, Rollins, and Handley.

Ans. We did, during the time inquired of, deliver to George W. Trimble, at the request of Bissell, Foss, and Hunter, certain sums of money belonging to said Bissell, Foss, Hunter, Robertson, Rollins, and Handley, derived from the purchase of ore from the Winnemuk lode and the Eureka. Don't know whether it was to
66 secure him for going on any bond or not.

Int. 7. State whether or not you can attach to your deposition a copy of the check, order, or draft which you gave to Nelson Hallock; and, if you can, will you attach the same, and state whether there are any endorsements on the original check, draft, or order; and, if you answer yes, state in whose handwriting such endorsements are, if you know.

Ans. I cannot attach such copy. Have no recollection as to endorsements.

Int. 8. Lastly, do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this examination, or persons in question in this cause; if yes, set forth the same in your answer?

Ans. The check given by us to Hallock, as stated, was in partial settlement for ores purchased from the Eureka mine delivered by Bissell, Foss, and others. Upon final settlement in full for said ores, as I remember it, the said check was returned to us and destroyed, and one given instead to C. R. Bissell and Company for eleven thousand one hundred and six-nine dollars and eighty-

eight cents ($11,169.88), endorsed "C. R. Bissell & Co., by G. W. Trimble." This last-named check was given by us Nov. 18, 1878.
67 It was our custom to pay either Bissell, Hunter, or Trimble for ores delivered from the Winnemuk mine, or from the Eureka.

(Signed) WILLIAM H. JAMES.

Subscribed and sworn to, this twenty-ninth day of April, A. D. 1880, before me—

(Signed) ROBERT H. BUCK,
Commissioner.

I, Robert H. Buck, of the county of Lake and State of Colorado, a commissioner duly appointed to take the deposition of the said William H. James, a witness whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said William H. James as a witness in the said suit between the said Simon H. Foss and Absalom V. Hunter as plaintiffs, and Charles R. Bissell and The First National Bank of Denver, as defendants in the original bill, and The First National Bank of Denver as plaintiff and Simon H. Foss, Absalom V. Hunter, and Charles R. Bissell as defendants in the cross-bill, he was duly sworn by me to testify the truth in relation to the matters in controversy between the said parties, so far as he should be interrogated concerning the same; that the said deposition was taken by me and reduced to writing by me at my
68 office in the city of Leadville, in the county of Lake and State of Colorado, on the twenty-ninth day of April, A. D. 1880, and that after said deposition was taken by me, as aforesaid, the interrogatories and answers thereto, as written down, were read over to the said witness, and that thereupon the same was signed and sworn to by the said deponent, William H. James, before me, at the place and on the day and year last aforesaid. And I do further certify that Nelson Hallock and Edward Eddy, named as witnesses in said *dedimus potestatum*, were absent from the said county of Lake at the time of the taking of said deposition, and their attendance for the purpose of giving their depositions could not be secured.

(Signed) ROBERT H. BUCK,
Commissioner.

Endorsed: 247. Deposition of Wm. H. James, ac. def't B. Opened, published, and filed May 5, 1880. (Signed) Edward F. Bishop, clerk.

69 THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

The President of the United States of America to Robert H. Buck, Esq., a U. S. commissioner, residing at Leadville, in the county of Lake, and State of Colorado, Greeting:

Whereas it has been represented that Nelson Hallock, William

H. James, and Edward Eddy, material witnesses in a certain cause now pending in the circuit court of the United States for the district of Colorado, wherein Simon H. Foss and Absalom V. Hunter are plaintiffs and Charles R. Bissell & The First National Bank of Denver are defendants, and that the said witnesses reside at Leadville aforesaid, in the said district of Colorado:

Now, know ye, that in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority as commissioner, to examine the said witnesses, and you are therefore authorized and required to cause the said witnesses to come before you, at such times and place as you may therefor designate and appoint, and diligently to examine the said witnesses on the oath or affirmation of the said witnesses by you first duly in that behalf administered, and faithfully to take the deposition of the said witnesses upon all interrogatories and cross-interrogatories attached to these presents on the part of the said defendant Bissell, and none other; and the same, when thus taken, together with this commission and the said interrogatories, to certify into our said circuit court, in a sealed envelope, with the least possible delay.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court, at the city of Denver, in the district aforesaid, this 24th day of April, A. D. 1880, and of the Independence of the United States the 104th year.

[SEAL.] (Signed) EDWARD F. BISHOP, *Clerk.*

Fees before commissioner:

15 folios	$3 00
Certificate	50
Per diem	3 00
2 oaths	20
Postage	15
	$6 85

70 [Blank form.]

71 And afterwards, and on, to wit, the 6th day of May, A. D. 1880, came John W. Webster, Esq., an examiner in chancery of said court, and filed in said court and in said cause a report of the testimony taken before him, and the said report is in words and figures as follows, to wit:

eight cents ($11,169.88), endorsed "C. R. Bissell & Co., by G. W. Trimble." This last-named check was given by us Nov. 18, 1878.
67 It was our custom to pay either Bissell, Hunter, or Trimble for ores delivered from the Winnemuk mine, or from the Eureka.

(Signed) WILLIAM H. JAMES.

Subscribed and sworn to, this twenty-ninth day of April, A. D. 1880, before me—

(Signed) ROBERT H. BUCK,
Commissioner.

I, Robert H. Buck, of the county of Lake and State of Colorado, a commissioner duly appointed to take the deposition of the said William H. James, a witness whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said William H. James as a witness in the said suit between the said Simon H. Foss and Absalom V. Hunter as plaintiffs, and Charles R. Bissell and The First National Bank of Denver, as defendants in the original bill, and The First National Bank of Denver as plaintiff and Simon H. Foss, Absalom V. Hunter, and Charles R. Bissell as defendants in the cross-bill, he was duly sworn by me to testify the truth in relation to the matters in controversy between the said parties, so far as he should be interrogated concerning the same; that the said deposition was taken by me and reduced to writing by me at my
68 office in the city of Leadville, in the county of Lake and State of Colorado, on the twenty-ninth day of April, A. D. 1880, and that after said deposition was taken by me, as aforesaid, the interrogatories and answers thereto, as written down, were read over to the said witness, and that thereupon the same was signed and sworn to by the said deponent, William H. James, before me, at the place and on the day and year last aforesaid. And I do further certify that Nelson Hallock and Edward Eddy, named as witnesses in said *dedimus potestatum*, were absent from the said county of Lake at the time of the taking of said deposition, and their attendance for the purpose of giving their depositions could not be secured.

(Signed) ROBERT H. BUCK,
Commissioner.

Endorsed: 247. Deposition of Wm. H. James, ac. def't B. Opened, published, and filed May 5, 1880. (Signed) Edward F. Bishop, clerk.

69 THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

The President of the United States of America to Robert H. Buck, Esq., a U. S. commissioner, residing at Leadville, in the county of Lake, and State of Colorado, Greeting:

Whereas it has been represented that Nelson Hallock, William

H. James, and Edward Eddy, material witnesses in a certain cause now pending in the circuit court of the United States for the district of Colorado, wherein Simon H. Foss and Absalom V. Hunter are plaintiffs and Charles R. Bissell & The First National Bank of Denver are defendants, and that the said witnesses reside at Leadville aforesaid, in the said district of Colorado:

Now, know ye, that in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority as commissioner, to examine the said witnesses, and you are therefore authorized and required to cause the said witnesses to come before you, at such times and place as you may therefor designate and appoint, and diligently to examine the said witnesses on the oath or affirmation of the said witnesses by you first duly in that behalf administered, and faithfully to take the deposition of the said witnesses upon all interrogatories and cross-interrogatories attached to these presents on the part of the said defendant Bissell, and none other; and the same, when thus taken, together with this commission and the said interrogatories, to certify into our said circuit court, in a sealed envelope, with the least possible delay.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court, at the city of Denver, in the district aforesaid, this 24th day of April, A. D. 1880, and of the Independence of the United States the 104th year.

[SEAL.] (Signed) EDWARD F. BISHOP, *Clerk.*

Fees before commissioner:

15 folios	$3 00
Certificate	50
Per diem	3 00
2 oaths	20
Postage	15
	$6 85

70 [Blank form.]

71 And afterwards, and on, to wit, the 6th day of May, A. D. 1880, came John W. Webster, Esq., an examiner in chancery of said court, and filed in said court and in said cause a report of the testimony taken before him, and the said report is in words and figures as follows, to wit:

UNITED STATES OF AMERICA, } ss:
State of Colorado, }

In the Circuit Court of the United States, District of Colorado.

FIRST NATIONAL BANK OF DENVER, Complainant,
against
SIMON H. FOSS, ABSALOM V. HUNTER, and CHARLES R. BISSELL, Defendants. } Cross-Bill.

It is agreed and stipulated as follows:

1st. That all testimony taken in this branch of the case can and shall be used in the original case, and no evidence need be taken in the original cause.

2nd. That on Wednesday, the 10th day of September, A.
72 D. 1879, the parties hereto shall commence taking evidence in this cause in Denver city, at the law office of L. P. Rockwell. Said Foss and Hunter shall first take the evidence on their side, then said Bissell shall take the evidence of his part, and in case the bank wants to introduce any it has the right to do so, following testimony of said Bissell. Then shall follow the rebuttal evidence, if any.

3rd. The evidence of witnesses in this State shall be taken by the respective parties on said 10th day of September instant, and from day to day following thereafter, unless the evidence then taken renders it necessary to obtain a witness, witnesses, or other evidence not in attendance, in which case either party shall have a reasonable time to obtain the presence of such witness or witnesses or other evidence. The cause to be heard by the court at the October term, 1879.

4th. Each party shall pay the expenses for the time being occasioned by taking this testimony, but such cash can be finally taxed against the party as the court may deem proper under the circumstances.

(Signed) D. P. DYER,
Att'y for Foss and Hunter.

73 (Signed) L. P. ROCKWELL,
Att'y for Bissell and for the Bank.

We hereby agree to take this testimony before John W. Webster, examiner in chancery for the United States district court for the district of Colorado, and he can certify and return this evidence to the said court the same as though an order of court had been previously made referring this case to him to take and report the proofs in the case.

(Signed) L. C. ROCKWELL,
Att'y for Bissell and the Bank.

(Signed) D. P. DYER,
Att'y for Foss and Hunter.

UNITED STATES OF AMERICA, } ss:
State of Colorado, }

In the Circuit Court of the United States for the District of Colorado.

FIRST NATIONAL BANK OF DENVER, Complainant,
vs.
SIMON H. FOSS, ABSALOM V. HUNTER, and CHARLES R. BISSELL, Defendants. } Cross-Bill.

74 Testimony of witnesses taken before me, John W. Webster, one of the examiners in chancery, duly appointed by the circuit court of the United States for the district of Colorado, at my office, in the city of Denver, State of Colorado, pursuant to the agreement and stipulation of the parties by their respective attorneys, which is hereto annexed, in a certain suit or matter in controversy now pending and undetermined in said court, upon cross-bill therein, wherein The First National Bank of Denver is complainant and Simon H. Foss, Absalom V. Hunter, and Charles R. Bissell are defendants, on behalf of interpleading defendants Foss and Hunter in said cross-bill, on Wednesday, the 10th day of September, A. D. 1879, commencing at the hour of two o'clock p. m. of said day.

Said complainant in cross-bill and Charles R. Bissell, one of the interpleading defendants, appeared by L. C. Rockwell, Esq., its attorney, and said defendant interpleaders Foss and Hunter appeared by D. P. Dyer and W. S. Decker, Esq'rs, their attorneys. Thereupon said defendant interpleaders Foss and Hunter produced the
75 following witnesses in their behalf, who, previous to the commencement of their examination in this cause, were by me respectively cautioned and sworn upon their corporal oaths, as follows:

SIMON H. FOSS, a witness of lawful age, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the parties aforesaid so far as he should be interrogated concerning the same, deposed and testified as follows:

Int. 1. How long have you resided in Colorado?

A. About seven years.

Int. 2. During the year 1878 where were you living?

A. Leadville, Colorado.

Int. 3 Are you acquainted with Dr. Charles R. Bissell?

A. Yes, sir.

Int. 4. How long have you known him?

A. Three or four years, perhaps longer. I have known him by sight ever since I have been in Colorado, but would not be positive about the exact time.

Int. 5. Are you acquainted with Edward Handley, George W. Robertson, and Amos B. Rawlings?

A. Yes, sir.

Int. 6. When did you first make their acquaintance?

A. About June, 1878.

76 Int. 7. Where at?

A. Leadville.

Int. 8. Are you acquainted with the mine known as the Winnemuck mine, in California Mining District, Lake county, Colorado?

A. Yes, sir.

Int. 9. At what time, if at all, did you become interested as part owner in the Winnemuck mine?

A. I think it was last March—in the spring of 1878.

Int. 10. How did you become interested?

A. I became interested with the other parties, Dr. Bissell and Hunter, by sinking a shaft on the claim to mineral, for a three-fourths interest.

Int. 11. How was that three-fourths interest owned?

A. A quarter to Dr. Bissell, a quarter to Hunter, and a quarter to myself; then a quarter was owned by the locators, Davidson and Van Boxall.

Int. 12. After you became interested in the mine, as you have stated, state how long, if for any length of time, Hunter, Bissell, Van Boxall, Davidson, and yourself worked the mine together.

A. Van Boxall and Davidson did not worked the mine at all with us. Until we found mineral, we worked it by contract. It wasn't long before Handley, Robertson, and Rawlings bought
77 out Van Boxall and Davidson; it might have been in June or July.

Int. 13. After Handley, Robertson, and Rawlings bought the quarter interest of Davidson and Van Boxall, did the then owners of the Winnemuck operate together?

A. They operated until the last of September, 1878.

Int. 14. In the last of September, 1878, can you state how, if at all, the interests of these several parties who were owners in the mine were changed?

A. Well, in the first place, these Missourians (as we always called them), Handley, Robertson, and Rawlings, wanted to dispose of their interest. They wanted to draw out some money, and I told them that as long as Tabor and the Little Pittsburg Company were suing us and attaching our ore, etc., it was impossible to let them have any money, as we had given our word to Halleck and the others who went on our attachment bonds that we would retain all the money, or deposit it in bank. In the meantime Mr. Handley kept wanting to sell, and I went to Dr. Bissell and talked it over with him about buying them out. We talked about $20,000;
78 they had asked $30,000; the Doctor and I talked it over about twenty thousand dollars, and he said we can do better than that. So it ran along for a week, perhaps, or more; perhaps two weeks. I spoke to Handley, and asked him if anything had been done; if anything had been said to him; he said, no. I was over to the Theatre Comique one evening, and said, we want to do something right away about buying that interest. I understood that a man by the name of Dexter had been in the mine for the purpose

of looking at it and buying an interest for Tabor, and so getting possession. While I was sitting there Hunter came in and overheard some of the conversation, and I concluded that we had got to buy it at any price. I told Hunter to go ahead. Hunter went ahead with it and we bought it, or I bought it.

Int. 15. Before going further into that will you explain what litigation had taken place between the owners of the Little Pittsburg and yourselves before that time?

A. They had been attaching our ore.

Int. 16. Give an explanation of those lawsuits.

A. All the ore we hauled from the mine was attached by Tabor and Rische, and we had to give a forthcoming bond to get
79 the ore; we gave good security every time, and secured them by leaving the money in bank; that was the reason why we could not declare a dividend.

Int. 17. Do you recollect how many attachment bonds were given by you under these attachments?

A. Perhaps three; it might have been two, or perhaps four.

Int. 18. Do you know the amount of each bond?

A. I don't remember. One must have been $30,000.00; one perhaps was forty thousand. I don't remember positively.

Int. 19. You can state whether or not the amount of the bonds was greater than the amount of the money?

A. It was greater. I don't know but in one case it was about equal to what we had there, but as a general thing it was much greater.

Int. 20. Will you state at what time you bought the fourth interest of Handley, Robertson, and Rawlings in the Winnemuck?

A. It was the last day of September, A. D. 1878.

Int. 21. What was the price paid?

A. $15,000.00.

Int. 22. State how the payments were made for their quarter interest.

A. I gave them a check for $300.00 on the bank in Leadville; they drew the money right there. The understanding was
80 then that they were to go to the Springs with Mr. Hunter, keeping the deed themselves until the balance of $14,700.00 was paid, when they were to deliver the deed to Mr. Hunter.

Int. 23. State, if you know, whose money went to the payment of the balance of that purchase?

A. I don't know whose money; I suppose that Hunter got it from James H. B. McFahren, of Colorado Springs.

Int. 24. What was Hunter's business?

A. Cashier of the People's Bank, Colorado Springs.

Int. 25. Who was president?

A. McFahren.

Int. 26. How long after the first of October, if you know, before Hunter received, if at all, the amount of the money by him advanced to purchase their interest in the mine?

A. It was after the middle of December. I think somewhere about the first of January.

Int. 27. State fully, Mr. Foss, what arrangement was made between Mr. Hunter and yourself in reference to the purchase of that quarter interest, and what your respective interest should be after the purchase of the mine.

A. The arrangement was this: That if he should furnish the money he should have two-twelfths and I one-twelfth of the one-fourth.

Int. 28. Up to that time each of you had owned a fourth?

81 A. Yes.

Int. 29. After the deed had been made to you by Handley, Robertson, and Rawlings, and also by Hunter, did you reconvey to Hunter the fourth interest which had been previously conveyed to you by Hunter, as well as the two-twelfths of the Handley, Robertson, and Rawlings interest, which you had agreed to convey to him in consideration of his furnishing the money to make the purchase?

A. I did.

Int. 30. Is that the deed (handing paper to witness)?

A. That is the deed I made to Hunter; that is my signature.

The deed is offered in evidence, filed, and marked Exhibit A.

Int. 31. At the time of the purchase by you of the Handley, Robertson, and Rawlings interest, with whom did you make the trade?

A. Why, I made it with Mr. Handley and Hunter.

Int. 32. Handley represented Rawlings and Robertson?

A. Handley always had represented them. I made contracts with him previously. He always bought the grub and tools.

Int. 33. After you made the arrangement with Handley, Robertson and Rawlings signed the deed?

A. Yes, sir.

82 Int. 34. Now, I will get you to state if you know what amount of money there was in the Exchange Bank belonging to you, or having been taken out of the mine?

A. The balance due the Minnemuck mine was about $16,000.00. I showed it to Mr. Handley at the time. That was after we had paid for the New Discovery.

Int. 35. Then [the] Handley, Robertson, and Rawlings interest in the money was a quarter?

A. Yes, sir.

Int. 36. At the time you made the trade with Handley, did you show him the books and the balance due the firm?

A. I did, in connection with Mr. Donnelson. I asked him to show them.

Int. 37. How long prior to the time that you had made the trade with Handley was it that you had made the arrangement with your securities on these attachment bonds that the money received from the mine should remain in bank?

A. The exact date I can't give, but I think it must have been a month at least; somewhere about the time of the purchase of the New Discovery.

Int. 38. How long after you made the trade with Handley was it

before the suits in which these bonds were given were settled or otherwise disposed of?

A. It was the 16th of November that we consolidated.

83 Int. 39. Up to the sixteenth of November these suits against the owners of the Winnemuck were still pending?

A. Yes, sir.

Int. 40. At that time there was a settlement and certain promises made and the suits dismissed?

A. Yes, sir.

Int. 41. Will you state, Mr. Foss, what conversation, if any, you had with Dr. Bissell, prior to your concluding the trade with Handley, in reference to his taking an interest with you in that purchase?

A. I met Dr. Bissell over Tribe and Jeffrey's store, in Leadville, and we talked the purchase over. I told him that the boys wanted to get out bad, and I thought they would sell pretty reasonable; but that as I was working about there managing the mine, he could do better than I could. I said he had mentioned to us one night on the street $30,000 as a price, but that we wouldn't agree to for a moment. We wondered how we could do about the money for the purchase. If we could use the company money, we thought we must use a little more than our joint interest. Bissell was to see the boys in regard to it. The matter went on, and a little while before the trade, perhaps a week before, I saw Handley and asked

84 him if Bissell had said anything to him. He said, no; and a day or two after this conversation with Handley I met Hunter in the Comique Theatre. The foreman of the mine had been to me and told what was going on. We talked and thought the thing over. When I saw these boys again I asked Mr. Rawlings if anybody had been up to the mine. He said, no. I couldn't find out anything. I was nervous, knowing Tabor was working to get the upper hand of us; and finally, the end of it all was that I bought the interest, as I have testified before.

Int. 42. State what was said about the price.

A. We talked the amount; $20,000.00 was spoken of. He thought that was too high and more than we should give. I thought so too, but $30,000.00 was the price fixed by them. That I wouldn't think of for a moment. We figured it over, but I don't remember the exact figures, and we concluded that at $15,000.00 we could pay for it, in case we could draw out the money in the Exchange Bank. Dr. Bissell thought it could be bought for less than $10,000.00. There was no proposition made for any definite price, but if we

85 could buy the property we were to buy it together. He was to see what was the best he could do with it.

Int. 43. State whether there was, up to the time you concluded the trade with Handley, any agreement with Dr. Bissell that you and he should buy that property for $15,000.

A. No, sir.

Int. 44. State what your own financial condition was at that time, Mr. Foss.

A. All the resources I had was a small grocery store, not paying very largely, and I was just living in the hope of beating Tabor.

Int. 45. State whether you had any money of your own at that time.

A. The money that I drew from the bank, $300.00, to pay Handley and the others, brought my account down very low.

Int. 46. I'll get you to state whether, at the time the agreement was made to purchase for $15,000.00, you had that amount of money on hand.

A. No, sir.

Int. 47. After you had your talk with Dr. Bissell you made your arrangement with the cashier of the People's Bank to furnish the money?

A. Yes, sir.

Int. 48. By that agreement you were to have one-twelfth and he was to have two-twelfths for furnishing the money?

A. In consideration of their furnishing the money they were to have two-twelfths.

86 Int. 49. I will get you to state whether, in that arrangement with Mr. Hunter, Dr. Bissell was at all interested.

A. No, sir.

Int. 50. After you had concluded the trade with Handley, had you then any conversation with Dr. Bissell about it? If so, state what that conversation was.

A. Yes, sir; Dr. Bissell met me at the store of Tribe and Jeffreys, and asked me what I had done. I said, "Not much of anything." He then asked me, "Did you buy out the Missourians?" I said, "Yes." He asked what I gave, and I told him $15,000. He "poohed" at it, and acted as if he scarcely believed it, but didn't exactly contradict me; and then I walked off up street with him. There was some other remark made there then; I don't exactly remember it; I think he said, "I want to be posted." I think he asked me then who went in with me; I told him Hunter; I believe he said then that "he wanted — in;" I told him "it was more than we talked of;" I think those were just the words I used, "it is more than we talked of." He said, "No," and I walked off, or he went away.

Int. 51. What was his manner, and what else did he say, if anything?

87 A. I told him "we couldn't use the company money as we talked of;" and he said, "I can raise as much money as anybody."

Int. 52. Was any portion of the money in the Exchange Bank, belonging to the Winnemuck mine used in paying Handley, Robertson, and Rawlings for their interest?

A. Not a cent.

Cross-examination by Mr. L. C. ROCKWELL:

X Int. 1. You, Dr. Bissell, Mr. Hunter, and George Trimble were all residents of Colorado Springs, were you not, previous to the spring of 1878, when you went up to Leadville?

A. Yes. I lived in Colorado Springs, but I think Hunter lived out in the country somewhere, but that was his home.

X Int. 2. What arrangement did you and Dr. Bissell and Hunter have, at the time you took this contract from Van Boxall and Davidson, to sink the shaft for a three-fourths interest in the claim?

A. We were to pay for sinking the shaft to mineral for a three-quarter interest in the claim.

X Int. 3. Each of you were to pay for one-third of the expenses, were you not?

A. Yes, sir; we were to share the expenses equally for a
88 one-quarter interest each of the whole claim.

X Int. 4. What did you pay for the quarter interest in the New Discovery lode?

A. $40,000.00.

X Int. 5. Who made that purchase for you—that is, the interest in the New Discovery for yourself, Bissell, and Hunter?

A. It was made by Burdell and Witherow, but the mine was bought for all four of us—for Bissell, Hunter, myself, and Handley, Robertson, and Rawlings.

X Int. 6. And paid for out of the account then in the Miners' Exchange Bank at Leadville for the Winnemuck Company, was it not?

A. Yes, sir.

X Int. 7. If Mr. Hunter was interested in this purchase of the quarter interest from the Missourians (as you call them), why did he join in a deed from them to you?

A. For the purpose of getting it for $15,000.00, so that we might get it as cheap as we could.

X Int. 8. Now, detail specifically and minutely what conversation you and Hunter had regarding this purchase previous to paying the money.

A. That is just what I stated to Mr. Dyer. I met Hunter and talked it over with him. I said we could not use the company's money,
because of the stipulation we entered into at the time we
89 made the arrangement with Halleck and the other bondsmen
that they should be secured for going on our bond. I explained all this to Mr. Hunter, and told him that if we could buy the boys for so much money it was a good thing, and I said that if he would furnish the money he could have two-thirds and I would take one-third.

X Int. 9. Previous to the making of the deed, did you know that Hunter was going to join in that deed also?

A. Yes, sir.

X Int. 10. Did you agree with Hunter, previous to this, that if he would join in the deed to deceive these Missourians you would convey back to him after they had sold you their interest?

A. Yes.

X Int. 11. And you conveyed the idea to these men that Hunter was going to convey to you at the same price they were selling?

A. I don't think I said that to them. I don't think it was necessary to say anything. No, sir.

X Int. 12. You didn't pay Hunter anything for his interest, did you?

A. I think not.

X Int. 13. Don't you know you didn't?

A. I don't know; I might have paid him something to make it legal, a dollar, or something of that kind, and he hand it
90 back to me. I don't remember, only that I paid enough, or it was fixed so as to make it legal.

X Int. 14. No; but did you pay him any valuable consideration for his interest?

A. I didn't pay him anything unless I drew that check for more than $300.00. I am trying to think just what I drew that check for. I don't think I did.

X Int. 15. If you did he was to refund it to you?

A. Yes, sir.

X Int. 16. He didn't pay you any money when you made the deed back to him, did he?

A. No, sir.

X Int. 17. Exhibit A expresses a consideration of $30,000.00. Mr. Hunter did not actually pay you any money for that deed, did he?

A. Not unless a nominal sum.

X Int. 18. Who drew the deed from Handley, Robertson, and Rawlings to you, of their interest in the New Discovery and the Winnemuck?

A. I think Donelson, the book-keeper in the bank, drew it.

X Int. 19. At the time Mr. Hunter and you had this conversation at the purchase of the Handley, Robertson, and Rawling's interest, was it not understood and talked over by you and Hunter that Dr. Bissell should know nothing about what you were doing?

91 A. I don't know whether it was or not; I had told Mr. Hunter about the talk I had had with Dr. Bissell.

X Int. 20. Didn't you say to Handley, Robertson, and Rawlings that you did not want them to say anything about this purchase to Dr. Bissell?

A. I might; I don't remember. I should not contradict it if Mr. Handley or any of them should say so. I don't know why I should have said so, though.

X Int. 21. Where was this contract or purchase made between yourself and Handley, Robertson, and Rawlings?

A. Up by the mine, if I remember right—up in the Winnemuck mine.

X Int. 22. How long did Messrs. Handley, Robertson, and Rawlings remain in Leadville after you gave them this $300.00 check?

A. About sixteen or eighteen hours; this was along before bank closed, about three o'clock, and they went away on the stage in the morning with Mr. Hunter.

X Int. 23. Give the date.

A. I think it was the last day of September and the first day of October that they went to Colorado Springs.

X Int. 24. Why were they not paid out of the money in the Exchange Bank at Leadville?

A. I don't know why it should have been paid out of that;
92 Hunter had no authority to draw that money.

X Int. 25. Can you tell about the hour of the day when you first notified Dr. Bissell of this purchase?

A. I don't remember; I had two or three conversations—one in the afternoon about three or four o'clock. I don't remember exactly.

X Int. 26. At the very first time that he saw you afterwards, did he not ask you if he was not "in" on that purchase; did he not say, "I am 'in,' Foss, with that purchase, am I not?" And didn't you reply that you didn't know yet?

A. No; the second time he asked me what I had done, I said "Nothing much." He said, "Have you bought out the Missourians?" I said, "Yes," and told him the price, and he "poohed" at it, and acted as if he didn't think much of it. I have already told all that we said. A short time afterwards he met me again, and he might have asked me then, "Am I in?"

X Int. 27. At the time you had the talk with Dr. Bissell, at the room, did not the Doctor talk $15,000.00 as the price at which the interest could be brought, and explain what kind of talk he would give them?

A. He said it could be bought for less than $10,000.00, for
93 seven or eight thousand. Those are the only figures I remember being used.

X Int. 28. The bonds in the attachment cases were all signed by you, Bissell, Trimble, Halleck, and others?

A. Yes.

X Int. 29. At the time you and Bissell had the talk in his room, was not it understood between you that Dr. Bissell was to talk with them and get it down to $15,000.00, and that he was to refer to the liability under the attachment suits to them on those bonds?

A. Yes; I remember the whole of that conversation, except about the $15,000.00; I don't think that was the sum which the Doctor said the interest could be bought for; the argument was used that there was no money which could be drawn at present.

X Int. 30. Did this deed which they made you convey or carry their interest in this money deposited in the bank?

A. It did; as well as the ground; I took Mr. Handley into the bank, and Mr. Donelson showed him the books and just what amount was deposited there; I told him that the money was there, and that as soon as the suits were settled some of it would belong to them, but until it was settled nothing could be turned over to them.

94 X Int. 31. Then this deed covered the money in bank as well as the mine?

A. Yes, sir.

X Int. 32. You say you didn't understand that Dr. Bissell was in that purchase?

A. No, sir.

X Int. 33. You knew that Tabor and Rische, on the one side, as plaintiffs, and Bissell, Foss, and Hunter, and Handley, Robertson, and Rawlings, as defendants, had considerable trouble regarding the right to the ore taken out of the mine by the last-named gentlemen, did you not?

A. Yes; we had lots of suits about it.

X Int. 34. There was a suit commenced for an injunction by Rische and Tabor against your parties in the month of September, 1878, was there not?

A. I presume so; they were commenced all along there.

X Int. 35. Look at that answer, Mr. Foss, and see if you ever heard it read; it is the answer of Bissell, Foss, and Hunter, impleaded with Handley, Robertson, and Rawlings, filed in the district court of the fourth judicial district in and for Lake county, Colorado, in the suit brought by Tabor and Rische against you gentlemen, for an injunction to restrain you from taking ore out of the Winnemuck lode; look at it, and see if you ever saw it before and heard it read.

A. That is my signature; I signed it.

95 X Int. 36. You swore to it before Mr. Loomis, didn't you, on the eleventh day of October, 1878?

A. I think so.

X Int. 37. In this answer, Mr. Foss, the following paragraph appears: "That afterwards, and on or about the twenty-seventh day of July, A. D. 1878, William M. Van Boxall and George Davidson sold and conveyed, by a good and sufficient deed of conveyance, all their right, title, and interest in and to said Winnemuck lode and premises to Edward H. Handley, Amos B. Rawlings, and George W. Robertson, and delivered the possession of their interest in said lode and premises to them, who at once entered into the occupation and possession of said lode and premises with said Bissell, Foss, and Hunter, who worked and mined said lode and premises, and took therefrom ore and mineralized rock and dirt until on or about the first day of October, A. D. 1878, at which time the said Rawlings, Handley, and Robertson sold and conveyed all their right, title, and interest in and to said premises to the said Simon H. Foss, who holds the title thereto for the use of the said Bissell, Hunter, and himself. And the said Rawlings, Handley, and Robertson, at the time of making said deed, delivered to these defendants all their possession

96 and interest therein, and these defendants are now occupying and possessing the same." Now, if Dr. Bissell was not interested in the purchase, how did it come that you signed and swore to this answer containing that allegation?

A. It was a job that Dr. Bissell and his attorneys put up. I talked it over with Mr. Trimble. We talked it over together, and he explained it to me. He said, "I am interested there, and it is for the purpose of letting me in as well as the rest." The next day I signed it.

X Int. 38. Who do you mean by his attorney?

A. You, Mr. Rockwell.

X Int. 39. Did you ever say to me that that answer was not correct?

A. I did.

X Int. 40. When, where, and at what time?

A. I don't remember the exact time. I was in the back part of the bank, and you said that I had misrepresented you. I didn't tell you exactly what I thought, but I carried the idea that there was some job of that kind; that I was well satisfied of it.

X Int. 41. What month was that?

A. In the month of January, 1879.

X Int. 42. Then, the allegation in that bill, that you then held the title for the use of Bissell, Foss, and Hunter, you say is not true?

A. I say it is not true.

97 X Int. 43. But you say your statement to-day is true?

A. That I have sworn to.

X Int. 44. Do you remember where you signed that answer?

A. In your office, I think; if you and Loomis had the same office.

X Int. 45. Don't you remember that that answer was signed in the back part of the bank?

A. I don't know but it was. I didn't sign it the night it was read; I can swear positively to that.

X Int. 46. If the allegations in that bill are not correct, why did not you call my attention to it at the time it was read over to you?

A. By talking it over with Mr. Trimble I was persuaded that it would not amount to anything, but my convictions were not to sign it.

X Int. 47. That answer relates to the same interest in the Winnemuck and New Discovery lodes that is now the subject-matter of this controversy, does it not, and the same parties mentioned in the bill are the parties now talked about in this lawsuit?

A. It must be so.

Redirect examination by Mr. DYER:

Redirect int. 1. I notice that Charles Cavender is signed to

98 this bill as one of the attorneys in the case; is he the same Charles Cavender that now resides in Leadville?

A. Yes, sir.

Int. 2. In this litigation between Tabor and Rische, on the one hand, and yourself, Bissell, and Hunter, on the other hand, were Mr. Cavender and Mr. Rockwell the attorneys in that case?

A. They were.

Int. 3. Were you present at the time this answer was prepared and written?

A. No, sir.

Int. 4. Do you know whose handwriting the answer is in?

A. I think it is in Cavender's.

Int. 5. Do you know whether Dr. Bissell was present at the time this answer was prepared?

A. I don't. Cavender and Dr. Bissell occupy the same rooms.

Int. 6. The same Mr. Rockwell, who was attorney for the defendants in that case, is attorney for Dr. Bissell in this case, is he not?

A. Yes, sir.

Int. 7. Do you know how it came about that Dr. Bissell signed the affidavit to this answer first, and you signed it afterwards?

A. I can't refresh my memory so as to state that as a fact. I know that Dr. Bissell signed it, but I don't know how it was signed.

Int. 8. In preparing this answer, and in signing it as you
99 did, you had confidence in the attorneys you employed, did you not?

A. I did, after being assured by Mr. Trimble the second time that it was all right.

Int. 9. Before you signed this paper you talked with Mr. Trimble in regard to the allegation as to Dr. Bissell's interest, and you were assured by Mr. Trimble that it would not conflict with your interest in this matter?

A. I did.

Int. 10. If it had not been for the two conversations you had with him, would you have signed the answer?

A. No, sir; I certainly would not.

Int. 11. In point of fact, Mr. Foss, did Dr. Bissell contribute anything to the purchase of that interest from Handley at the time you made that purchase, or has he ever contributed anything since?

A. Not a dollar, to my knowledge.

Int. 12. Is this the same Charles Cavender as the Charles Cavender whose name appears as associate counsel with Mr. Rockwell, and who delivered the deed to you on the fourth day of December, 1878?

A. He didn't deliver it to me; he delivered it to Mr. Trimble.

Int. 13. Do you know where Mr. Hunter was at the time this answer was prepared?

A. I think Mr. Hunter was at Colorado Springs.

100 Thereupon it is agreed by counsel for all the parties herein that the examiner may make a copy of the answer offered in evidence in said cause, without the exhibits thereto attached, and that said copy shall be marked Exhibit B, and considered the same as if it were the original.

(Signed) JOHN W. WEBSTER,
Examiner.

Recross-examination by Mr. ROCKWELL:

X Int. 1. Don't you know that I drew that answer, and that Charles Cavender had nothing to do with it, except to copy the draft that I had prepared?

A. I know this, that you had all the papers given you to get the case up with; the answer seemed to be in Mr. Cavender's handwriting; that is all I know about it.

X Int. 2. Now, do you say that Dr. Bissell and I entered into any job or conspiracy or had any understanding, express or implied, that I was to draw an answer, that was to complicate the interest

which you had acquired from Handley, Robertson, and Rawlings in any way?

A. To the best of my knowledged and belief, I believe you did.

X Int. 3. What reason have you to say so?

A. Because Mr. Trimble told me of the conversation he had with Dr. Bissell.

101 X Int. 4. Of your own knowledge you know absolutely nothing of my trying to draw an answer which didn't correctly and truthfully state the exact state of affairs between you men as I understood it?

A. I can't swear positively that I do.

(Signature waived.)

The above is all the testimony of witness Simon H. Foss.

(Signed) JOHN W. WEBSTER, *Examiner.*

Mr. EDWARD H. HANDLEY, a witness of lawful age, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in reference to the matters in controversy, between the parties to this cause, so far as he should be interrogated concerning the same, testified as follows in answer to interrogatories duly propounded to him by counsel:

Direct examination by Mr. DYER:

Int. 1. State your age.

A. Twenty-three.

Int. 2. Where do you reside?

A. In Leadville.

Int. 3. When did you first go to Leadville?

A. In May, 1878.

Int. 4. Where from?

A. Missouri.

Int. 5. What part of Missouri?

A. LaFayette county.

102 Int. 6. Who, if any one, went with you from LaFayette county?

A. George Robertson and Amos B. Rawlings.

Int. 7. At what time, if at all, did Handley, Robertson, and Rawlings become interested in the Winnemuck mine?

A. In July, 1878; about the last.

Int. 8. How did you become interested?

[A.] By buying Van Boxall and Davidson out in the claim.

Int. 9. What interest did they own in the property?

A. One-fourth.

Int. 10. How long did you continue to own one-fourth interest in the Winnemuck mine?

A. A few days over two months.

Int. 11. How and when did you dispose of your interest?

A. The second day of October, 1878, to Mr. Foss.

Int. 12. What time was the trade closed at Leadville, if you recollect?

A. On the second day of October.

Int. 13. At what price did you sell to Mr. Foss?

A. For $15,000.00.

Int. 14. For the fourth interest?

A. Yes, sir.

Int. 15. How and in what manner were you paid the $15,000.00, and by whom?

A. We were paid $300.00 by Foss in the Exchange Bank;
103 I went down to Colorado Springs with the deed, and we turned over the deed when Hunter drew the drafts.

Int. 16. How much were these drafts for?

A. $14,700.00 in all.

Int. 17. Where were they drawn?

A. In the People's Bank.

Int. 18. Upon whom were the drafts drawn?

A. I don't know.

Int. 19. State how much cash was paid you at Colorado Springs.

A. Not a cent.

Int. 20. The drafts that he gave you were drawn on Chicago or St. Louis, were they not?

A. I don't know. We got the money on them in Missouri.

Int. 21. What did you do with those drafts?

A. Took them to Lexington, Missouri, and drew the money on them.

Int. 22. The drafts were cashed there?

A. Yes, sir.

Int. 23. State with whom you concluded and made the trade of your fourth interest in the mine; who did you trade and talk with?

A. I traded with Mr. Foss.

Int. 24. State whether, at the time you traded with Foss, Dr. Bissell was present, and had anything to do with the trade?

A. No; he did not.

Int. 25. State what conversation, if any, you ever had with
104 Dr. Bissell touching your connection with that mine.

A. I had no conversation with him privately; I tried to sell to Bissell and Foss when they were together. I told them I wanted to sell out; they asked why; and I told them it was because I didn't know anything about the business, or what was going on. Bissell said I was posted just as well as he was.

Int. 26. Was that all the conversation you ever had with Dr. Bissell, touching the sale of that mine by you, before you made the trade?

A. Yes, sir.

Int. 27. Did he ever have any conversation with you in which he asked you to reduce your price from $30,000.00 to $15,000.00?

A. No, sir.

Int. 28. Was there ever any conversation had between Bissell and yourself, except what you have stated?

A. No, sir.

Int. 29. At the time you sold your interest to Foss, did you go

and examine the state of the account of the Winnemuck company in the Exchange Bank?

A. Yes; I went to the bank with Foss.

Int. 30. What was there to the credit of the Winnemuck Company altogether?

A. A little over $16,000.00, I think.

105 Int. 31. How much of that would have belonged to you?

A. One-fourth.

Int. 32. State whether or not in your sale to Mr. Foss of your interest in the Winnemuck mine that amount was included in the sale?

A. Yes, sir.

Int. 33. Was it explained to you at the time?

A. Yes.

Int. 34. In the conversation had with you did you know that the suits had been brought by Tabor and Rische?

A. Yes, sir.

Int. 35. Did you know that attachment writs had been issued?

A. Yes, sir.

Int. 36. Did you know of the arrangement made with Halleck that the money should all remain in bank until they were settled?

A. Yes, sir.

Int. 37. In your dealings with Foss were you authorized to act for your partners, Robertson and Rawlings?

A. Yes; they were going to deed with me.

Int. 38. Had you the full control and management of the whole interest?

A. Yes, sir.

Int. 39. And your trade with Foss was ratified by a deed from them, was it?

A. Yes, sir.

Int. 40. And you all went back to Missouri together?

A. Yes.

Int. 41. In your sale of the quarter interest to Foss, had

106 Bissell, to your knowledge, anything whatever to do with it?

A. No, sir.

Int. 42. At what time did you get back to Missouri?

A. Seventh day of October, 1878.

Int. 43. Where did you go then?

A. To LaFayette county.

Int. 44. How far did Robertson and Rawlings live from you?

A. Robertson lived about two miles from me; Rawlings about six.

Int. 45. Are you acquainted with Charles Cavender?

A. Yes, sir.

Int. 46. When did you first become acquainted with him?

A. In August, 1878.

Int. 47. Was he one of the attorneys in your lawsuits with Tabor and Rische for you?

A. Yes, sir.

Int. 48. You knew him then at Leadville while this litigation was going on between Rische and Tabor and yourselves?

A. Yes, sir.

Int. 49. He was one of your attorneys, and also for Dr. Bissell?

A. He was attorney for the company.

Int. 50. After seeing him at Leadville, when did you next see him after your return home, if at all?

A. On November 25th, 1878.

Int. 51. Where did you see him?

A. At my home.

Int. 52. At what time did he come to your home?

A. About one o'clock in the afternoon.

107 Int. 53. Did he deliver you a letter from Dr. Charles R. Bissell?

A. He took a letter out of his pocket and started to hand it to me; then he said he would read it to me instead, and stood up in the buggy and read it to me.

Int. 54. What became of that letter, if you know?

A. I don't know; Cavender kept it.

Int. 55. Did he let you take it?

A. No, sir; he just read it to me.

Int. 56. State the substance of that letter, inasmuch as it is not in your power to produce it.

Objected to, as immaterial. The letter itself is the better evidence. It is not shown that the letter is lost or that Dr. Bissell ever signed it or sent it.

A. As he read it to me it was to have Robertson, Rawlings, and myself convey the one-fourth interest in the Winnemuck which we had sold to Mr. Foss, but I think the letter stated that it would in no way involve us or make us liable for what we were doing. That was the substance of the letter. They offered us a hundred dollars apiece if we would make the deed.

Int. 57. What did you do then?

A. We went over to Warrensburg, Missouri, that day and

108 signed the deed, about seven o'clock, and Cavender took the eight o'clock train for Leadville again.

Int. 58. That was on the twenty-fifth of November, 1878?

A. Yes.

Int. 59. How much did Cavender pay you, Robertson, and Rawlings for signing the deed that you speak of to the interest which you had before that time sold to Foss?

A. He paid us $300.00.

Int. 60. How much apiece?

A. He gave us $100.00 apiece.

Int. 61. Was there anything further said in that letter which purported to be from Dr. Bissell, telling you that he wanted the deed to compel Mr. Foss to convey an interest to him?

A. I think there was; yes, sir; it did.

Certified copy of the deed from Edward H. Handley, George W. Robertson, and Amos B. Rawlings to Reynolds, acknowledged on the 25th day of November, 1878, at Johnson county, Missouri, is

offered in evidence by Mr. Dyer, and is duly filed and marked as Exhibit C.

Int. 62. Is that a copy of the deed that you mentioned?

A. Yes, sir.

Int. 63. State whether the deed that you then signed had
109 been previously prepared by Mr. Cavender, if you know?

A. Yes, sir; it had.

Int. 64. Where was this deed executed?

A. In the office of Samuel Sparks, attorney-at-law, at Warrensburg, Missouri.

Int. 65. The consideration expressed in this deed is $10,000.00. What portion of $10,000.00 did you ever receive for signing the deed?

A. Only $100.00 apiece.

Int. 66. What conversation did you have with Cavender?

A. He said about the same as the letter did; that it would not in any way make us liable; and Sparks, the lawyer, told us the same thing.

Int. 67. What, if anything, was said in the several conversations you had with Cavender about a criminal prosecution against you for making a second deed to property which you had already conveyed?

A. No, sir; there was nothing said about that; he held out the idea that, provided we staid away from Colorado, there would be nothing done.

Int. 68. The property described in this deed that I have shown you (Exhibit C) is the same property that you sold to Foss in October, 1878, is it not?

A. Yes, sir.

110 Int. 69. Are you acquainted with the handwriting of A. B. Rawlings?

A. Yes.

Int. 70. Are you acquainted with the handwriting of Samuel Sparks, the lawyer?

A. Yes, sir.

Int. 71. Look at that letter and say whether or not you received it through the post office.

A. I did.

Int. 72. When?

A. About three weeks ago.

Int. 73. Whose handwriting is the body of that letter in?

A. Mr. Sparks.

Int. 74. Who signed it?

A. Rawlings.

Int. 75. Is that his signature?

A. Yes, sir.

Int. 76. I will read that in evidence.

Objected to, because it does not appear that the letter was written by Dr. Bissell or the First National Bank, or that it was written by the authority of either of them.

"FAYETTEVILLE, JOHNSON CO., MISSOURI,
"*August 11th*, 1879.

"EDWARD H. HANDLEY.

"FRIEND HANDLEY: Since you left here I have found out through Sparks, of Warrensburg, that we were swindled by Foss and Hunter in the sale of the Winnemuck; that in this way Hunter's sale to Foss was all a sham, and used to induce us to sell, and when
111 we did there was (at the bank) some $15,000.00 due Robertson, you, and myself, and they took this same money and bought us out, when both the money and the mine was ours. So you see it is a plain case of swindle. Sparks and Crittenden know where they can get the proof, and they think that we can recover that sum from Foss and Hunter. Bissell will be on our side. Sparks is his attorney here, and Robertson and I have agreed to give one-half of all sums that Crittenden and Sparks may recover for us. What do you say? Are you in? Answer at once by mail. Direct to me at Warrensburg, Missouri, care of S. P. Sparks. Keep quiet and 'mum.'

"Your true friend,

"A. B. RAWLINGS."

Int. 77. Is this the same Sparks into whose office Cavender took you to acknowledge the deed?

A. Yes, sir.

Mr. Rockwell withdraws his objection to the reading of the above letter.

Int. 78. You have stated, I believe, that you acted for yourself, Robertson, and Rawlings, in your trade with Foss?

A. Yes, sir.

Int. 79. Did you at the time of the trade know of the condition of the account, and the amount of money in bank, and the
112 general condition of affairs in that respect?

A. Yes, sir.

Int. 80. Did Rawlings, the man who wrote this letter, know it?

A. Yes, sir.

Int. 81. Did the other man know it?

A. Yes, sir.

Int. 82. You told them of the condition of affairs at the time you made the sale, and they were acquainted with the facts when they made the deed, were they?

A. Yes, sir.

Int. 83. At the time this was done, was not Rawlings in the bank, and did he not make an examination of the books at the same time that you did?

A. Yes; Mr. Donelson showed us all them, the books.

Int. 84. How long after you executed the second deed to this property before you came back to Colorado?

A. About three months afterwards.

Int. 85. And you have been living since that time at Leadville?

A. Yes, sir.

Cross-examination by Mr. ROCKWELL:

X Int. 1. Are you sure that Dr. Bissell never talked to you about the purchase of that property up there, except as you talked to him in connection with Foss?

A. Yes, sir.

X Int. 2. At the time or previous to your making this deed
113 to Mr. Foss, did either Hunter or Foss say anything to you as to who was interested in the purchase?

A. No, sir.

X Int. 3. Did you not know that Foss, Bissell, and Hunter were interested together as mining partners up there in the Winnemuc, and had been since April?

A. Yes, sir; I knew it.

X Int. 4. Did it not occur to you that Mr. Bissell was interested in that purchase, when two out of the three mining partners had purchased your interest?

A. Well, no he was not on the ground, and he had not anything to say to me. I did not take it that way at all, as he was not there when the trade was made.

X Int. 5. Was there any reason assigned by Foss and Hunter for your going to Colorado Springs in order to get the money?

A. Yes, sir; they did not have it there to give me in Leadville.

X Int. 6. Where was George Trimble at this time?

A. He was at Colorado Springs.

X Int. 7. Do you know how long he had been at Colorado Springs?

A. About five days previous to that, as near as I can remember.

X Int. 8. How long were you in fixing this thing up with Foss and Hunter?

114 A. We made the trade in two days, but it was some time before we got paid; we were three days making the trade.

X Int. 9. It was consummated on the first day of October, was it not?

A. Yes, sir.

X Int. 10. You left Leadville for Colorado Springs on the morning of October first, did you not?

A. No, sir; it was on the third we left there. I know we did not leave there on the 1st, because we stayed in Leadville and voted on the 1st of October, and next day we telegraphed, and the telegraph wire was down.

X Int. 11. At the time you made this conveyance to Mr. Foss what conversation had you, Rawlings, Robertson, and Hunter about selling to Mr. Foss?

A. We had agreed to sell our one-half to Foss for $30,000.

X Int. 12. You, Robertson, and Rawlings were to get $15,000 and Hunter $15,000?

A. Yes, sir.

X Int. 13. Did you suppose at the time that it was a *bona fide* sale by Hunter to Foss?

A. Yes, sir; it was carried out in that way.

X Int. 14. Did you make an affidavit in the case of Foss and Hunter against the Little Pittsburg Co. on the 28th day of June last,
115 1879, in the suit that they brought to get an injunction and a receiver?

A. No, sir; I did not.

X Int. 15. I have a copy of the affidavit, and it is just the same as you testified to on that occasion, except the closing paragraph. I had it copied.

(The copy referred to was handed to the witness.)

A. I did make an affidavit.

X Int. 16. Then you were mistaken when you said a moment ago that you did not?

A. Yes, sir.

X Int. 17. In that affidavit do you remember this language: "At the time we sold to Foss, in September, 1878, Charles R. Bissell was trying to buy from us our interest in the Winnemuck and New Discovery, but my partners and myself refused to sell to him"?

A. I remember stating this.

X Int. 18. No- do you remember that language being in the affidavit?

A. Not exactly that way. I remember this: The morning we started to Colorado Springs Dr. Bissell came into Tribe and Jeffreys' store and asked us where we were going and what we had done, and we told him; we told him that we had sold out and were going home. I think, as near as I remember, he asked me what
116 we got, and I told him. I don't remember what he said then; I don't think he said anything at all.

X Int. 19. If the language that I read does appear in the affidavit is it correct?

A. No, sir.

X Int. 20. In what respect is it incorrect?

A. The part that says Dr. Bissell had been trying to buy our interest in the mine is not correct.

X Int. 21. Mr. Rockwell offered in evidence the copy of affidavit above referred to, which is marked Exhibit "D," hereto attached.

Redirect examination by Mr. DYER:

Int. 86. In the conversation just alluded to with Dr. Bissell, do you remember of Dr. Bissell saying, when you told him you had sold to Foss for $15,000, that "you had played hell;" do you recollect a declaration of that sort from the deacon, or anything of that sort being said?

A. Yes, sir; I think I do.

Int. 87. Was there anything said in that conversation, or at any other time, by Rawlings or Robertson to Dr. Bissell, to the effect that they would not have sold to him anyhow?

A. Not that I remember of now.

117 Int. 88. I find I am wrong about that, and that no such conversation took place. Do you remember that Dr. Bissell, in this talk that you had with him, in which he said "you had

played hell" in selling it, also said that he wanted to buy it himself? Was not that about what he said?

A. I don't remember what he did say in regard to it.

Int. 89. Did you in that conversation tell Dr. Bissell that you had sold that property to Foss?

A. Yes, sir.

Int. 90. Did you tell him the price at which you had sold it to Foss?

A. I think we did.

Int. 91. What did he say, if anything, about believing you had received the amount you stated you had received for it, or were going to receive?

A. He did not say anything; I think he turned round and walked out of the door; that was about what took place; I don't think he said anything.

Int. 92. What day of the month was it, if you recollect, that you had this conversation with Dr. Bissell, when he asked you what you had done and you told him?

A. I think it was on the 3d day of October.

Int. 93. That was the day you left for home?

A. Yes, sir.

118 Recross-examination by Mr. ROCKWELL:

X Int. 22. Was there anything said by Mr. Foss or Mr. Hunter, at the time that you were negotiating this sale, not to let Dr. Bissell know anything of what was going on?

A. Yes, sir.

X Int. 23. What was said, and where was it said?

A. I don't remember where it was said, nor what was said; Hunter did not say it; Foss said it.

X Int. 24. Were the negotiations carried on clandestinely, so that Bissell should not learn what you were doing?

A. No, sir.

X Int. 25. Cannot you give the substance of Mr. Foss' statement, whether he said he did not want Bissell to know about this?

A. I think it was in the bank when he paid us the $300, but I am not sure; I think that was when he said it; I don't remember just what he did say.

X Int. 26. Give the substance as you now remember it.

A. The substance was not to tell Bissell that we had sold to him.

By Mr. DYER:

119 Int. 94. The trade you made to Foss was a fair, open trade, was it not?

A. Yes, sir.

By Mr. ROCKWELL:

X Int. 27. Are you certain that Dr. Bissell at any time stated to you that you had played hell in selling; do you state that he used that language or language importing that?

A. I think he did, in the book store where the ticket office was then.

(Signatures waived.)

The above is all the testimony of witness Edward H. Handley.

(Signed) JOHN W. WEBSTER,
Examiner.

And Mr. GEORGE W. TRIMBLE, a witness of lawful age, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the parties to this suit, so far as he should be interrogated concerning the same, testified in answer to interrogatories propounded by counsel as follows:

Direct examination by Mr. DYER:

Int. 1. State your name in full, your place of residence, and your occupation.

120 A. My name is George W. Trimble; I reside in Leadville, Colo.; I am cashier of the Miners' Exchange Bank; that is my principal business

Int. 2. How long have you resided in Leadville?

A. About a year and a half, I judge.

Int. 3. Are you acquainted with Dr. Bissell, Mr. Hunter, and Mr. Foss?

A. Yes, sir.

Int. 4. I hand you the answer in the case of Horace A. W. Tabor and others against Charles R. Bissell and others, filed in the district court October 16, 1878, signed by Simon H. Foss, and ask you what you know of and concerning that answer, its preparation, and all about it. (Handing paper to witness.)

A. I heard the original of this read.

Int. 5. That is the draft from which this was taken?

A. Yes, sir.

Int. 6. When was it that you heard it read, in reference to the signing of it by Foss?

A. It was one evening in the front room, the second story of Tribe and Jeffreys' building. I don't remember who occupied it at that time.

Int. 7. Who were present?

A. Dr. Bissell, Mr. Rockwell, myself, and Mr. Foss; I think
121 that was all; I am not sure of any one else.

Int. 8. State whether you saw that paper that night or not?

A. I simply heard it read. I did not see it.

Int. 9. Did you see this answer as it is presented here in this handwriting, or was it in the original draft?

A. My impression is that it was in the handwriting of Mr. Rockwell at the time it was read.

Int. 10. You heard a portion of that answer read by Mr. Rockwell; will you state how that corresponds with your recollection of the original draft that you heard read in the presence of Foss?

A. This is either not the paper, or it was read different.

Int. 11. You heard the portion of it read by Mr. Rockwell to which the attention of the witness Foss was called; will you state how that corresponds with your recollection of the original draft as read that night that you speak of.

A. The wording is the same, except the words "Bissell, Hunter, and himself." In the original or in the paper, as it was then read, it said: "Who holds the title thereto for the use of the company."

Int. 12. In lieu thereof, what were the words used in the
122 original draft as read to Foss and yourself that night?

A. In lieu of the words "Bissell, Hunter, and himself," there was read the word "company."

Int. 13. State whether or not, before Mr. Foss made the affidavit to that bill, he talked with you touching it.

A. He did; immediately after the reading of the bill.

Int. 14. State whether he called your attention, or you called his attention, to the statement in the bill that it was paid for the company?

A. Yes, sir; he called my attention to it.

Int. 15. What did you say to him, and what was said about it?

A. I told him that Mr. Rockwell was our attorney, and I supposed it was all right. He wished to know if I did not think it was put in there for the benefit of Bissell's claim. I told him that I thought not; that I thought Mr. Rockwell, being our attorney, he put nothing in but what was right. He did not sign it. We were up stairs when this was read, and when he got through he called me out, and we went down stairs and talked the matter over, and I don't think he signed it that night. I don't know when he signed it. I never saw the bill from that time to this.

123 Int. 16. Do you recollect whether you were present when the bill was prepared for Mr. Foss' signature?

A. I was not.

Int. 17. Of your own knowledge you do not know whether this bill was read over to him as it is here, or not, when he signed it?

A. I do not.

Int. 18. Where were you on the 30th of September, 1878?

A. I was in Colorado Springs.

Int. 19. How long did you remain in Colorado Springs?

A. I got into Leadville on the 2nd of October.

Int. 20. That was after the trade with Handley had been concluded?

A. Yes, sir.

Int. 21. You were not present at the trade and do not know anything of the facts touching the negotiations during that time?

A. No, sir; I was not present and know nothing except conversations since.

I will get you to state when, if at all, your attention was first called to the fact that Handley, Robertson, and Rawlingshad executed another deed to this same property to C. J. Reynolds.

A. It was in the month of December, I think; I don't remember the date.

Int. 22. How did you first find it out?

A. Dr. Bissell showed me a certified copy of it.

124 Int. 23. Where were you when Dr. Bissell showed you the certified copy of Dr. Reynolds' deed?

A. In his room in the second story of Tribe and Jeffrey's building.

Int. 24. What other paper did he have, if any, at the time?

A. He had a power of attorney and a letter from Dr. Reynolds, of Colorado Springs.

Int. 25. The same Reynolds who is mentioned in the deed?

A. Yes, sir.

Int. 26. What conversation had you with Dr. Bissell at that time touching that second deed? State all that occurred there.

A. I was in Dr. Bissell's room. I think I was invited by him to go there, and he showed me a certified copy of the deed from Robertson, Rawlings, and Handley to Reynolds for their interest in the Winnemuc and New Discovery property; he also showed me a power of attorney and read me a letter that accompanied the papers.

Int. 27. From whom did the letter purport to be?

A. From Dr. Reynolds.

Int. 28. What was said then?

A. I think I told Dr. Bissell that I did not think his deed was very good; that I did not think Dr. Reynolds was an inno-

125 cent party; Dr. Bissell said to me that he had got that deed for the purpose of making Mr. Foss divide up the purchase of the interest from Robertson and others. I insisted that the deed was not any account; he said even if it was not any account he had a little clause to put in the answer to the suit with Tabor and Rische which would cover the case, which answer Mr. Foss had sworn to.

Int. 29. Is this the suit that he referred to?

(Handing witness paper marked "Exhibit B.")

A. Yes, sir; that is the suit.

Int. 30. State fully what he said in reference to having that clause inserted, and by whom.

A. He said he had Rockwell to put it in.

Int. 31. For what purpose?

A. For the purpose of making Mr. Foss divide up the interest of Rawlings and others.

What other conversation had you with him about it, if you recollect?

A. Well, we had a pretty general conversation. Dr. Bissell went on to state his grievances in the matter, that he ought to have been in on the purchase, and during the conversation he stated that he wanted another one-twelfth; he said he would confirm the

126 five-twelfths that Hunter and myself owned, which appears in the name of Mr. Hunter in this suit, and he wanted the other twelfth to leave Mr. Foss his original interest. I figured out to him that our interest did not need any confirmation, that we had a good title to what we had, and he and Foss could fight it out over the twelfth.

Int. 32. Then do I understand you he was willing you should have the two-twelfths of Handley, Robertson, and Rawling's interest to you and Hunter, provided you would agree to let him have the other twelfth, which would reduce Foss back to his original three-twelfths, or one-fourth of the amount?

A. That was the subject of his conversation; I don't know how he got at it.

Int. 33. You did not agree to it?

A. No, sir.

Int. 34. Had you any further conversation with Dr. Bissell at any other time touching this matter?

A. Dr. Bissell left about that time, and has been there very little since; I don't think I have had any conversation with him since in regard to the matter.

127 Int. 35. How long did the account run between Bissell, Foss, Hunter, and Handley?

A. It ran until the sale of their interest.

Int. 36. Then how long did it continue in the name of Foss, Hunter, and Bissell—up to the 16th of November, the time of the consolidation?

A. Yes, sir; and after that there was a great deal of it that was unsettled, and the account could not be closed until it was all settled up, which was in the latter part of December, I think.

Int. 37. Has there ever been a final settlement of the account of the Winnemuc and New Discovery lodes?

A. Yes, sir.

Int. 38. When was the final settlement made between Dr. Bissell?

A. Well, there never was any final settlement made with Dr. Bissell. I will state fully, if you will allow me, how the matter was.

Int. 39. Yes, sir; that is what I want.

A. Dr. Bissell left Leadville the last of December—I think about the last days of December—and he came in and drew out about what his interest was at that time; he left a little balance because there were some unsettled bills; that he had not come in to

128 straighten up the account; after these bills came in the balance of his interest was passed to his credit—to his individual account; I did that myself in order to close it up.

Int. 40. Is that balance that was passed to his individual credit, after a settlement of all the affairs, still to his credit in the bank, or has it been drawn out?

A. I think Dr. Bissell drew it out a few days ago.

Int. 41. Did Dr. Bissell examine the books kept by you containing the items charged on the Winnemuc account, and the credits, that were given?

A. Yes, sir; I think Dr. Bissell looked over the books at that time; they were written up fully to that time—December.

Int. 42. Have you that book with you?

A. Yes, sir.

(Producing book, which was offered in evidence, and marked "Exhibit E.")

Int. 43. State whether this book marked "Exhibit E" contains a

full, true, and perfect account of the Winnemuc and New Discovery mines while they were operated by Bissell, Hunter, and Foss?

A. It does, to the best of my knowledge; I did not do all the writing in the book.

Int. 44. You did some of it?

A. Yes, sir.

129 Int. 45. State whether the book was shown to Dr. Bissell.

A. Yes, sir; Dr. Bissell saw the book often.

Int. 46. Did he see it in December last?

A. Yes, sir; he saw it the day we settled. I don't mean settled. I mean the day he came in and drew out his money.

Int. 47. State whether your adjustment and settlement was made from the items as they appear on that book?

A. Yes, sir; as the items appear there.

Int. 48. Has all the money, to your knowledge, that was coming to Dr. Bissell from the Winnemuc mine covered by the period of time embraced in that book, been drawn out by him and received by him?

A. Yes, sir; I think so.

Int. 49. Will you state what became of the deed that was made to Foss by Handley, Robertson, and Rawlings after its execution at Colorado Springs?

A. It was given either to Dr. Bissell or one of the attorneys, to be used in evidence, or sent to them, rather, from Colorado Springs to Lake City, and from there here, to be used in evidence in the suit to which the record belongs, that is made an exhibit and marked "Exhibit B."

130 Int. 50. When did you first see that deed of Handley, Robertson, and Rawlings?

A. I first saw it, I think, about the first of December.

Int. 51. Where did you see it?

A. I saw it in Leadville.

Int. 52. Who had, it then?

A. Mr. Cavender handed it to me.

Int. 53. Charles Cavender, the lawyer, whose name appears in this answer?

A. Yes, sir; the same man.

Int. 54. Do you recollect the exact date that Cavender gave it to you?

A. I am under the impression that it was about the fourth day of December. I am not positive as to that though.

Int. 55. Up to that time had the deed from Handley, Robertson, and Rawlings to Foss been recorded in Lake county?

A. It had not.

Int. 56. At the time Cavender handed you the deed which Handley, Robertson, and Rawlings had executed to Foss in October, did he state to you that there had been another deed executed by Handley, Robertson, and Rawlings to Dr. Reynolds?

Counsel for Dr. Bissell objected to the witness stating what
131 Cavender did or said.

A. He did not state anything about it.

Int. 57. At the time he delivered you the deed which had been executed to Foss by Handley, Robertson and Rawlings, did he tell you that he had been back to Missouri for the purpose of getting another deed from Handley, Robertson and Rawlings?

A. No, sir; he did not.

Int. 58. Did you know anything about the execution of this second deed from Handley, Robertson and Rawlings to C. J. Reynolds, until a copy of it was exhibited to you by Dr. Bissell?

A. No, sir; that was my first knowledge of it, I think.

Int. 59. What time in the month of December was that copy exhibited to you by Dr. Bissell?

A. I think it was the latter part of the month, as near as I can remember.

Int. 60. Had Cavender been acting as your attorney in this case as well as Mr. Rockwell?

A. Yes, sir.

Int. 61. I believe you have stated you were not present when the negotiations were going on between Foss and Handley, Robertson and Rawlings, and don't know anything about the facts?

132 A. No, sir; I was not in Leadville at that time, and cannot state anything about it.

Int. 62. Do you recall any conversation had with Dr. Bissell touching this interest other than you have stated?

A. Yes; Dr. Bissell spoke to me on several occasions about it.

Int. 63. After or before the deed was shown to you from Reynolds?

A. It was before; after that I had not seen him; I do not remember the conversation; it was no particular conversation, but a general one.

Cross-examination by Mr. ROCKWELL:

X Int. 1. Did I know anything about this present controversy between Dr. Bissell and Foss at the time I drew that answer?

A. I don't know whether you did or not.

X Int. 2. Do you say that this answer, or the original, does not read now as you understood it to read?

A. I am very positive of it.

X Int. 3. The night it was first read?

A. Yes, sir.

X Int. 4. Who read that answer the first time you ever heard it read, and where was it read?

A. I think you read it in the front room in the second story
133 of Tribe and Jeffrey's building; I am under the impression that the office was occupied by Mr. Loomis at that time.

X Int. 5. Did you ever hear this answer read down in the back room of the bank?

A. I never did, sir.

X Int. 6. Do you say that the word "company" appears in this present answer, or that it appeared in the original answer?

A. It was read; I don't know whether it appeared or not.

X Int. 7. Did you read the original answer in any way, shape, or form?

A. No, sir; I heard it read.

X Int. 8. Did Mr. Foss, Mr. Hunter, or yourself know that there was any dispute between you and Dr. Bissell, or between Foss and Hunter and Dr. Bissell, about this one-twelfth at the time that answer was drawn?

A. Oh, yes.

X Int. 9. Why did you not make some remark or say that the answer did not express exactly the fact; you knew it had to be sworn to, did you not?

A. I had confidence in you as attorney at that time.

X Int. 10. Yes; but did you not say that Foss went out and talked to you?

A. Yes, sir; Mr. Foss called me out, and we went to the
134 back of the steps, and he asked me about that point.

X Int. 11. If it was of sufficient importance for you and Foss to go out and talk about it, was it not of sufficient importance to call my attention to it?

A. I did not think so at that time; I did not see the point at that time.

X Int. 12. There was just as much point to it then as there is now, exactly; how many times do you recollect the word "company" appearing in that answer that you say you heard me read?

A. I don't remember, excepting that one clause.

X Int. 13. Just at that one point; don't you think it would be kind of singular for the word "company" to appear in that one particular spot when it did not appear in a long answer in any other place?

A. Well, I don't know.

X Int. 14. And when those men were not a company?

A. I am very positive, Mr. Rockwell, that — read then that Mr. Foss bought it and held it in trust, I think, for the benefit of the company.

X Int 15. There never was any such thing written or dreamed of.

A. Well, it was read that way; I don't say it was written that way.

135 X Int. 16. It never was read in the world, at least by me; I don't know what Cavender read to you. Do you say Dr. Bissell said he got me, in that conversation, to put anything in that answer that was not exactly straight and right? Did he mention my name, and say I had put that in for the purpose of cheating anybody?

A. He said that he had had you put it in.

X Int. 17. At the time you had this conversation with Dr. Bissell in December, when you were talking about that Dr. Reynolds' deed, did he not claim, and did he not say, that he claimed that as a matter of right and justice, and that he was equally interested with Foss in the purchase?

A. I don't know that he stated it just in those words, but he

stated that he ought to have the interest; he stated that several times before.

X Int. 18. Do you remember a conversation with Dr. Bissell on the night of the second of October, 1878, when you arrived from Colorado Springs, in your bank, in Leadville, in which he stated to you that Foss had not absolutely refused to make a conveyance of that interest, but that he was neglecting to do so?

A. Dr. Bissell and I had a talk immediately after I got
136 home; I don't know whether on the night of the second or not; I won't be positive in regard to that; he asked me if I knew what Foss had done; I told I had met Mr. Hunter, Mr. Handley, and those other gentlemen, on the road going down as I came up, and Hunter had advised me of what had been done; and Dr. Bissell went on to state what he had done in the matter, and that he ought to have an interest.

X Int. 19. In answer to that, did you not state that Foss ought to make a deed, and that you thought he would do it?

A. I told Dr. Bissell at that time that if his story in regard to the matter was correct he ought to have this interest.

X Int. 20. Are you interested in the result of this suit?

A. Yes, sir.

X Int. 21. In what name, or under what designation, did you keep the Winnemuc account in your bank?

A. It was changed two three times; the last account was kept under the heading of L. H. O. H.; I think it was kept in the name of Dr. Bissell awhile; I don't know where they got the heading L. H. O. H., of the last account; it was some of Dr. Bissell's get up; I think it was a scheme to prevent attachment.

137 X Int. 22. What did those letters indicate?

A. I have not the least idea in the world.

X Int. 23. How was it kept previous to that time?

A. I am not positive of that; it was kept in Dr. Bissell's name a little while, and then I think it was kept in the name of the Winnemuc mine; may be for a little while. The principal account was the last one, and that was L. H. O. H.

Redirect examination by Mr. DYER:

Int. 64. In the conversation you had with Dr. Bissell, to which you have referred, do you remember of your telling him that Foss had called you out touching that answer, and that Foss did not want to sign it, and that Dr. Bissell said to you if he did not sign it he would let that suit go by the board?

A. Yes, sir.

Int. 65. State what that conversation was.

A. I told him that Foss (when he referred to this clause in the answer) on the night the answer was read called me out of the room and spoke of that; and I assured Mr. Foss that there was nothing in it. In fact, I was not very much versed in lawsuits then as I am now.

Dr. Bissell said that if Foss did not sign that answer that
138 night, as I understood it, he would let the whole thing go by the board.

Int. 66. Did he tell you that he had noticed Foss call you out?
A. Yes, sir; he said he noticed that.
Int. 67. And you told him that you had advised Foss that there was nothing in the answer, and for him to sign it?
A. Yes, sir.
Int. 68. Dr. Bissell said that if he did not sign it he would let the suit go by the board?
A. Yes, sir; about that.

(Signature waived.)

The above is all the testimony of witness George W. Trimble.
(Signed) JOHN W. WEBSTER, *Examiner.*

And now ABSALOM V. HUNTER, a witness of lawful age, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matter in controversy between the parties to this suit, so far as he should be interrogated concerning the same, testified in answer to interrogatories propounded by counsel, as follows:

Direct examination by Mr. DYER:

Int. 1. Where do you reside?
A. At Colorado Springs.
139 Int. 2. How long have you lived in Colorado Springs?
A. I came to the State of Colorado first in 1868.
Int. 3. What position, if any, have you held at Colorado Springs during the last two years?
A. I have been cashier of the People's Bank at Colorado Springs for about a year and eight months, I think.
Int. 4. Who is the president of that bank?
A. James H. McFerran.
Int. 5. Are you acquainted with Dr. Bissell?
A. I am.
Int. 6. How long have you known him?
A. I should think in the neighborhood of three years; perhaps over three years.
Int. 7. You are one of the parties to this suit?
A. I am.
Int. 8. When, if at all, did you become interested in the Winnemuc mine, situated in California Mining District, in Lake county, Colorado?
A. I think it was sometime in March or April, 1878, that I first commenced prospecting.
Int. 9. Who was interested with you in that mine at that time and soon after, and what interest did each of the parties that you may name hold in the mine?
A. There were Mr. Foss, Dr. Bissell, myself, Mr. Davidson, and Mr. William H. Van Boxall.
Int. 10. What interest had you in the mine then?

140 A. I owned a fourth interest, Dr. Bissell owned a fourth, Mr. Foss owned a fourth, and Mr. Van Boxall and Mr. Davidson owned a fourth between them.

Int 11. How long did those parties that you have mentioned continue to work the mine?

A. Part of them continued to work it all the time; Van Boxall and Davidson sold out their fourth interest to Edward Handley, George W. Robertson, and Amos B. Rawlings.

Int. 12. What time was that, if you recollect?

A. I could not say what time it was: I think it was somewhere about May or June, perhaps April, May, or June; I don't remember exactly, but some time in the fore part of 1878.

Int. 13. Were you at Leadville about the latter part of September, 1878, at the time that Handley, Robertson, and Rawlings sold their interest to Foss?

A. Yes, sir.

Int. 14. State what arrangement, if any, was made by Foss and yourself towards the purchase of Handley, Robertson, and Rawlings' one-fourth interest in the Winnemuc mine, and state all that occurred between you about the purchase?

141 A. I went up there in the latter part of September; there was an injunction suit, I think, then pending; things looked rather unfavorable, and Mr. Handley, Mr. Roberton, and Mr. Rawlings wanted to sell out their interest; they were talking around there about selling out for, I think, a day or so; they spoke to me about selling out, and we proposed that we would sell out together to Mr. Foss the one-half interest of the Winnemuc, and our part of the New Discovery, and all their accounts, moneys, and credits that were on hand.

Int, 15. What time, if at all, was the conveyance made to Foss by Handley, Robertson, and Rawlings?

A. I think it was September 30th, but I would not be positive; it was either September 30th or October 1st; somewhere about the latter part of September or the first part of October.

Int. 16. What was the consideration agreed to be paid to Handley, Robertson and Rawlings for their interest in the New Discovery, and their one-fourth interest in the Winnemuc?

A. $15,000.

Int. 17. Will you state what arrangement was made between Foss and yourself in reference to the quarter interest Handley,
142 Robertson and Rawlings had in the Winnemuc, and their interest in the New Discovery mine?

A. The arrangement between Foss and myself was this: If I bought these gentlemen out I was to put up the money until we could either make it out of the mine, or get it in some other way, if I should need the money; I was to get two-thirds interest and he was to get one-third; I did so; I furnished the money.

By Mr. ROCKWELL:

One-third of his quarter?

A. The whole quarter; I furnished the money to pay for the whole quarter and the whole thing.

Int. 18. By Mr. DYER (resuming): And were to get of that one-quarter what?

A. Two-thirds.

Int. 19. And Foss was to get of that quarter one-third?

A. Yes, sir; in other words, I was to get two-twelfths and he one-twelfth, and our *pro rata* of our part of the New Discovery.

Int. 20. What time did you leave Leadville for Colorado Springe, and in company with whom?

A. I don't know that I can tell; in company with all the parties but Mr Robertson; Handley and Rawlings were on the coach with me; it was some time about the first of October, perhaps the
143 first, or may be the second; I cannot say.

Int. 21. Did they go in company with you to Colorado Springs?

A. They did.

Int. 22. State whether it was understood that the money was to be paid them at Colorado Springs.

A. It was, and was paid there.

Int. 23. I will get you to look at these three drafts, dated Colorado Springs, October 4, 1878, and state whether or no they were given to the parties named therein in payment for their interest in the Winnemuc and New Discovery mines (handing drafts to the witness).

A. I will state the amounts of these separately. One draft is issued by the People's Bank of Colorado Springs; is signed by me as cashier, payable to the order of Amos B. Rawlings; drawn on Barthalow, Lewis & Co., of St. Louis, for $4,389; endorsed by Amos B. Rawlings and Patterson Stewart, and I. M. Smith, cashier of the Bank of Kansas City. The next one is dated October 4th; issued by the People's Bank; signed by me as cashier, in favor of George W. Robertson, on Barthalow, Lewis & Co., of St. Louis, for
144 $5,885.25; endorsed by George W. Robertson and the Morrison-Wentworth Bank, William Morrison, cashier. The endorsement does not show when it was paid by Barthalow, Lewis & Co. It passed through the clearing house of St. Louis on October 9th, 1878. Sometimes they stamp them in the clearing house and sometimes they do not. This one went through the clearing house Oct. 9, 1878. The next one is dated October 4, 1878; issued by the People's Bank; signed by me as cashier, in favor of Edward H. Handley; drawn on Barthalow, Lewis & Co., for $4,389. I would state that these several amounts do not make $15,000.

Int. 24. I will get at that after awhile. By whom is that draft endorsed?

A. It is endorsed by Edward H. Handley and Morrison-Wentworth Bank of Lexington, Missouri; William Morrison, cashier. That draft passed through the clearing house at St. Louis on October 8, 1878.

Int. 25. What is the total amount of those drafts?

A. I could not tell without footing them up. I can state this, though, in the first place, there was $300 paid in Leadville to

145 Robertson, Handley and Rawlings, and these amounts were paid afterwards. I also paid him some currency; I don't remember how much it was; and that the exchange made $15,000. I paid him $14,700 in the Springs, and he was paid $300 in Leadville, and the exchange on the draft was $36.75, perhaps.

Int. 26. The cash and drafts together, less exchange, made $15,000?

A. Yes, sir; including the $300 paid in Leadville.

Int. 27. That is what I mean.

A. There is another thing here that perhaps I might speak of. There are two of these drafts made payable for $4,389 each; the remaining draft to Mr. George W. Robertson is for $5,885.25; the difference between these drafts was proportioned out among the gentlemen themselves; Robertson would not sell unless they would make up his proportion of the difference.

Int. 28. You drew the drafts as they, among themselves, agreed they should be drawn?

A. I did, just as they agreed on; I said before that I was not sure about paying any currency at the Springs; I did not pay any; these drafts amount to $14,663.25; the exchange on that was
146 $36.75, making $14,700, and $300 paid in Leadville makes $15,000.

(The drafts testified to by the witness were offered in evidence and marked as follows: Draft No. 5778, marked "Exhibit F;" draft No. 5779, marked "Exhibit G;" draft No. 5780, marked "Exhibit H.")

Int. 29. State, if you please, when, if at all, the sums represented by these drafts were returned to you, or you were reimbursed for the amount you expended on that account.

A. I was paid the money back some time about the first part of January, 1879.

Int. 30. Was any portion of this money upon which those drafts were drawn belonging to the Winnemuc mine at the time you drew them?

A. No, sir; not a cent of it.

Int. 31. Under the arrangement that was made by Foss and yourself at the time of the purchase of Handley, Robertson, and Rawlings' interest, you were to advance the money for that purchase, is that true?

A. Yes, sir; that is true.

Int. 32. And in consideration of the advancement thus
147 made you were to receive two thirds and Mr. Foss one-third of Handley, Robertson, and Rawlings' interest?

A. Yes, sir; that is, two-thirds of the fourth, which would be two-twelfts, and one-twelfth to Foss, and the proportionate part of the New Discovery.

Int. 33. At the time this trade was made for this quarter interest, and you agreed to advance the money to make the purchase, will you state whether you had any conversation about purchasing any interest in this mine or not?

A. I never did, sir.

Int. 34. You may state for whom the purchase of this quarter interest from Handley, Robertson, and Rawlings was made.

A. It was purchased for Foss and myself.

Int. 35. To your knowledge, did Bissell have any part or parcel in the purchase of that interest?

A. Not that I ever heard of. He did not have anything to do with making the sale.

Int. 36. If it had been understood that you were not to receive two-thirds of that one-fourth, and that Bissell was to share in it, would you have advanced the money to make the payments?

A. No, sir; I don't think I would, that is, knowing how
148 the thing was. Of course, afterwards it would have been a different thing; the mine was in a very bad shape just at that time.

Int. 37. You may state whether you knew that certain attachment suits had been brought by Tabor and Rische against yourself, Foss, Bissell and Handley, Robertson and Rawlings, touching the ore that had been taken out of the Winnemuc mine at that time.

A. I did.

Int. 38. Did you know of any arrangement that was made with Halleck and others, who went on these bonds, that the money made out of the mines should remain in bank as their security against loss by reason of their going on bonds?

A. Yes, sir; I did.

Int. 39. That was the arrangement, to your knowledge?

A. Yes, sir.

Int. 40. Look at that paper and state by whom it is signed, if you know (handing paper to the witness).

A. It is signed by A. B. Rawlings, Edward Handley, and George W. Robertson.

Int. 41. In whose handwriting is the body of it?

A. In mine.

149 The paper identified by the witness was read by the counsel as follows:

"Know all men by these presents that we, the undersigned, for and in consideration of the sum of fifteen thousand dollars to us in hand paid, the receipt of which is hereby confessed, have this day bargained, sold, and delivered to Simon H. Foss the following described property, to wit: All of our entire interest in and to all the improvements on the Winnemuc and New Discovery mines, situate in Lake county, Colorado, consisting of all the improvements, tools, and horses that is used in working the New Discovery and Winnemuc mines, and also our entire interest in any and all dividends that belongs to said New Discovery and Winnemuc mines.

"Given under our hands and seals, this the fourth day of October, 1878. Colorado Springs, Colorado.

"A. B. RAWLINGS. [SEAL.]
"EDWARD HANDLEY. [SEAL.]
150 "GEORGE W. ROBERTSON. [SEAL.]

"Witness: A. V. HUNTER."

The WITNESS: I will state this: That paper says that the consideration is $15,000; that $15,000, you understand, included the personal property also.

Int. 42. Well, the paper speaks for itself.

A. I know; but then that paper says $15,000 consideration; of course it was not $15,000 just for the personal property, but for the whole thing.

Int. 43. After the drafts were drawn and delivered to Rawlings, Robertson, and Handley, was there a deed at that time delivered by them to you?

A. There was.

Int. 44. What became of that deed?

A. It is a pretty hard question to answer what did become of it.

Int. 45. By deed you mean a deed to their interest in the Winnemuc and New Discovery mines?

A. Yes, sir.

Int. 46. What did you do with it?

A. Well, sir, I had the deed ready to send up to Granite to be recorded; I don't remember the exact date. Mr. Foss and Mr. Trimble telegraphed me from Leadville to send the deed to Lake City to be used in a suit that was then pending between
151 us and Tabor. I did so. I sent it by express to James Y. Marshall, Lake City, and in the course of five, six, or ten days (somewhere in that neighborhood, I could not say the exact number of days) the parties had come up to Denver here for some reason, and the case was not tried there; they were to have a hearing here or something of that kind, and Dr. Bissell wired me two or three times about the deed. I supposed that Mr. Marshall had got it, but he had not, and I had the express agent at Colorado Springs, Mr. Barrett, send a tracer after it; he sent a tracer after it, and it was returned to me. As soon as the deed was returned to me I sent it by registered letter to James Y. Marshall, if I mistake not, and I am not positive, but I think I sent it in care of the Alvord House, enclosing fifty cents for him to pay the charges on it back to me, stating to Mr. Marshall that the deed had never been recorded. I did not want the deed delivered to any one until it was recorded. I wanted it returned to me before it was delivered to anybody
152 after he got through using it in the suit. Some time in October, about in the neighborhood of the middle, but I don't remember exactly when it was, I and Mr. Foss saw Mr. Rockwell in Leadville. We asked Mr. Rockwell about the deed, and he said the court must have it. I wrote to Mr. Marshall about it, and telegraphed about it, but never could hear anything about it. I asked Mr. Rockwell repeatedly about the deed, but it seems it never could be found. In the mean time some party purporting to be by the name of Cavender, acting as agent for one C. J. Reynolds, of Colorado Springs, or some other party, perhaps, went back to Missouri, and Mr. Cavender went back to Missouri in great haste, and saw these gentlemen, Handley, Robertson, and Rawlings, and got a quitclaim deed from them, which he brought and placed on record. If

I mistake not it was recorded on December 2nd; our deed turned up December 4th, two days afterwards.

Int. 47. Up to December 4th your deed had not been recorded?

A. No, sir; it was not recorded then; it was recorded later
153 in December.

Int. 48. State what you did, if anything, afterwards, to find out when the deed from Cavender was delivered to Trimble.

A. I went over to Mr. Marshall's office and asked him about the deed, and Mr. Cavender also.

Int. 49. After getting the information there, what did you do?

A. I went over there and asked them about it; then I went to the post office department at Leadville, and, being acquainted with the postmaster and assistant postmaster, I got the registry book and found that there was a letter addressed to James Y. Marshall, which left Denver on December 2nd—I think that was the date—from Mr. L. C. Rockwell; that is, the letter was from him and the receipt also; the receipt was signed by Charles Cavender for James Y. Marshall. Afterwards, while here in Denver, on two or three occasions, I went to the postmaster here, or rather to the post office, and asked to examine the records there, and the first time that I went there (I don't remember now when it was) the original receipt was still in
154 the office, issued to Mr. L. C. Rockwell and signed by Charles Cavender for James Y. Marshall. The next time I went there the receipt could not be found; whether it had been destroyed or filed away they could not tell; that was some time afterwards.

Int. 50. When did you first learn that the deed from Handley, Robertson, and Rawlings to C. J. Reynolds had been made?

A. I never knew it until after it was recorded; it was recorded before we knew anything about it.

Int. 51. It was recorded on the 2nd of December?

A. I think it was dated the second of December.

Int. 52. Please look at these dispatches and state whether you received them at Colorado Springs or not (handing papers to the witness).

A. Yes, sir; I received these.

Int. 53. Can you state the date of them?

A. The date is not given here.

Int. 54. You may state whether these dispatches had reference to the deed you had been speaking about as having been made to Foss by Handley, Robertson, and Rawlings.

A. They do. There is another thing that I wish to speak of here. This telegram that Trimble and Foss sent me to send this deed to Lake City also stated: "Send deed to Lake City to use in suit;
155 Foss makes deed to you." That was for my interest in the Winnemuc and New Discovery mines. Of course, I held on to the deed until I got my deed from Foss.

Int. 55. You got these dispatches in the ordinary way of receiving messages?

A. I did, sir; there are one or two others, I think; there were three or four of them about the same thing; I think the date of these dispatches is November.

Counsel read the dispatches, as follows:

"DENVER, COLORADO, —— 5, 1878.

"A. V. HUNTER, *People's Bank:*

"How about that deed? We are in need of it.

"C. R. BISSELL."

"DENVER, COLORADO, —— 6, 1878.

"A. V. HUNTER:

"When may we expect the deed? No progress yet. Answer.

"C. R. BISSELL."

The WITNESS: I think the last dispatch you read was the last message that I got, and I answered it that the deed had been sent, if that is the last one, and I think it is; I know the last message I got I answered that I had sent it.

Int. 56. Then after that you never received the deed at all, did you?

A. No, sir; I never received it at all until after this other
156 deed was recorded; I received it up in Leadville some time in December, I think.

Int. 57. Have you in your possession a copy of the notice signed by C. R. Bissell to the First National Bank of Denver?

A. I think it is in these papers.

Int. 58. There was a notice attached to the deposition in the Little Pittsburg case, was there not?

A. I think there was.

Int. 59. A letter of Mr. Bissell's, in the handwriting of Mr. Rockwell, was filed with that also?

A. Yes, sir; and signed by Mr. Bissell; it was among these papers; whether it is there now or not I cannot say.

Int. 60. I wish you would look at that letter and state whether it is a copy of the letter that you received from Mr. Bissell (handing paper to the witness).

A. Yes, sir: that is a true copy of it; I made this copy myself.

Int. 61. Where is the original of that paper?

A. It was attached to my affidavit in the Little Pittsburg suit.

Int. 62. Did you take this copy from the original letter?

A. I did, sir; I think it is marked as being a true copy of the original letter.

Int. 63. (The copy of the letter referred to was marked "Exhibit I.")

157 The WITNESS: Here is the other paper (producing paper, which is filed herewith and marked "Exhibit J").

Int. 64. Is the paper you now produce, and which has been marked "Exhibit J," a true copy of the notice that was served by C. R. Bissell upon the First National Bank of Denver?

A. Yes, sir; that is a true copy.

Int. 65. State whether or not of the money that was paid to Handley, Robertson, and Rawlings for their interest in the Winnemuc and New Discovery mines, any portion of it was paid by Dr. Bissell?

A. No, sir; it was not.

Int. 66. Did he at any time after this payment ever tender to you any portion of the amount thus paid by you for the fourth interest in the Winnemuc and New Discovery mines?

A. Not a cent, sir.

Int. 67. When did you see Dr. Bissell last before leaving Leadville in October, 1878?

A. I saw him last about twelve o'clock the night before I left—probably it was one o'clock—in the Miners' Exchange Bank, down on the corner of Chestnut and Pine streets; he was in here several times during the evening.

158 Int. 68. When, to your knowledge, was the claim of Bissell first set up to an interest in this purchase made by you and Foss of that quarter interest?

A. When we received this letter I knew it; that I gave you a copy of.

Int. 69. That was on the 8th of January?

A. I don't remember the date; I think it was the 8th of January, 1879; and also that he had attached the money in the bank, or stopped the money, rather.

Int. 70. Up to the time of the receipt by you of the letter, a copy of which is marked "Exhibit I" in this case, had you any conversation with or statement from Dr. Bissell claiming or demanding any interest in that purchase?

A. I never had.

Int. 71. Was that the first knowledge you had of it?

A. Well, positively; I had heard it from hearsay, through Reynolds at the Springs, that he had a deed; he was flourishing a deed around, and saying that he had a deed for a one-fourth interest in the Winnemuck and a proportionate part of the New Discovery.

Int. 72. Who is Reynolds?

A. He is, or used to be, a dentist down there at the Springs.

Int. 73. Is he a man of much means?

159 A. Yes; I think a good deal of means.

Int. 74. Has he got much money?

A. I don't think he has got very much money.

Cross-examination by Mr. ROCKWELL:

X Int. 1. The telegrams exhibited here should bear date in month of November, should they not?

A. I cannot say positively as to that; you can tell.

X Int. 2. That is the exact date, because we came here on the fourth of November.

A. I don't know when you were up here.

Is it not your best impression that it should be November?

A. Yes, sir; that is my best impression; I think so.

X Int. 3. You knew that Dr. Bissell made a claim of Foss for his interest in this property sold by Robertson, Rawlings, and Handley, at the time it was made, and before you started for Colorado Springs, did you not?

A. No, sir; I did not know that he made a claim, only that Mr.

Foss told me that Dr. Bissell came to him and told him that "he wanted in on that sale."

X Int. 4. Those were the words that Mr. Foss used to me, and Mr. Foss answered him that he could not get in. You are
160 now detailing what Mr. Foss told you, as I under-tand?

A. Yes, sir; what Mr. Foss told me; Dr. Bissell never said a word to me in his life about it that I remember anything about; I have no recollection of his ever saying a word to me about that fourth interest.

X Int. 5. Bissell had no reason to suppose you made a purchase, had he? From the transactions and signing of the deeds, to all the world you were a seller and not a purchaser of that property, were you not?

A. I was for the time being; yes, sir.

X Int. 6. So that Bissell did not know anything about your being a purchaser of that property, did he?

A. I don't know whether he did or not.

X Int. 7. Don't you know that Mr. Foss, in making that purchase, purposely kept that transaction from coming to the knowledge of Charles R. Bissell?

A. No, sir.

X Int. 8. Did not Foss in your presence, and did not you, request Rawlings, Robertson, and Handley not to let Bissell know anything about it?

A. Not to my knowledge.

X Int. 9. And was not the money paid at Colorado Springs rather than at Leadville, to prevent Bissell from knowing anything about it?

A. No, sir; it was not.

161 X Int. 10. Why did you not use the money deposited to the credit of the Winnemuck company in the Miners' Exchange Bank at Leadville to pay for this property?

A. Because it was a company affair, and we had no right to use it; besides, it was left there for our bondsmen until the thing was settled up. There had never been any settlement between us.

X Int. 11. When did you buy the New Discovery?

A. I could not say when it was. I think, perhaps, it was in August or September, or it might have been a month later or a month earlier.

X Int. 12. Don't you know you bought the New Discovery about six, seven, or ten days previous to the last of September?

A. I don't remember the exact date of it.

X Int. 13. Didn't you take the money of the Winnemuck Co. to pay for the New Discovery?

A. We took part of it. That was agreed to by all the parties concerned.

X Int. 14. If you had a right to take part of the money to pay for the New Discovery, why could you not just as well take it to pay for this interest?

A. Because Dr. Bissell had no interest in this.

162 X Int. 15. But he had an interest in the Winnemuck Co. money deposited there in the bank?

A. I know he had; but there never had been any settlement.

X Int. 17. I know. There had not been any settlement at the time you bought the New Discovery, had there?

A. No, sir; but it was agreed by all the parties concerned that we should buy the New Discovery.

X Int. 18. Who do you mean by all the parties?

A. All the parties were myself, Mr. Foss, Dr. Bissell, and Handley, Robinson, and Rawlings. There was a good deal of parleying before it was bought, getting the parties into it, more especially Dr. Bissell.

Redirect examination by Mr. DYER:

Int. 75. State whether or not you consulted your bondsman, Mr. Halleck, in reference to the purchase of the New Discovery.

A. Yes, sir; we did, and got part of the money from Mr. Halleck. I think it was five thousand dollars I got from Mr. Halleck, if I mistake not.

Int. 76. The amount you did draw from the Winnemuck mine he consented you should draw?

A. Yes, sir.

He was one of the principal bondsmen?

163 A. Yes, sir; you may say the principal bondsman we had.

(Signature waived.)

The above is all the testimony of the witness Absalom V. Hunter.

(Signed) JOHN W. WEBSTER,
Examiner.

The taking of testimony on behalf of Foss and Hunter, defendants, is closed, and by agreement of counsel the further taking of testimony in this cause is hereby continued until Thursday, the eleventh day of September, A. D. 1879, at the hour of nine and one-half o'clock a. m., at my office, in Denver.

(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the foregoing continuance, the taking of testimony is resumed at my office in Denver, this 11th day of September, A. D. 1879, at the hour of nine and one-half o'clock a. m. of said day, on behalf of defendant, Charles R. Bissell.

(Signed) JOHN W. WEBSTER,
Examiner.

Dr. CHARLES R. BISSELL, a witness of lawful age, who, be-
164 ing first duly cautioned and sworn by me to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the parties to this cause so far as he should be interrogated concerning the same, in answer to interrogatories propounded to him by counsel, testified as follows:

Int. 1. Are you one of the interpleading parties in this cause?

A. I am.

Int. 2. You know Messrs. Foss and Hunter and George Trimble, do you?

A. Yes, sir.

Int. 3. Have you had any business relations with those gentlemen; if so, state the nature of it, and when those relations commenced.

A. Somewhere about the 20th of April, 1878, I went to Leadville on a prospecting tour, and among other locations I was brought to that of the Winnemuck, owned by George Davidson and William H. Van Boxall. They made a proposition to me to go in and help develop their mine, which was then at a depth of ten feet. Accordingly I made an arrangement with them to go on and sink the shaft to mineral for a three-fourths interest. I came down to town
165 and saw George Trimble, in whose bunk I was sleeping at the time. I stated what I had done, and asked him if he would like to join me; he thought that he would; looked at it, and said that he would go in with me. Afterwards—probably the next day afterwards—he suggested to me that we take Mr. Foss in. I didn't know Mr. Foss; never had known him. I lived in the same town and knew the name Foss, and knew his face, but never had connected the two at all. On the strength of Mr. Trimble's wishing it, I consented to take Mr. Foss in. We commenced operations then—Foss, Trimble, and myself. It was several weeks before I knew that Mr. Hunter had any connection with it.

Int. 4. What interests were you each to have under this arrangement?

A. Under this arrangement I was to have one-fourth, Mr. Trimble one-fourth, Mr. Foss one-fourth, and the two parties, Davidson and Van Boxall, one-fourth.

Int. 5. In what proportion were you to share any profits and losses?

A. We were to share one-fourth each.

Int. 6. How long did that arrangement continue?

166 A. That arrangement continued, as far as our fourths (Trimble's, Foss', and my fourth) was concerned, up to the time that Robertson, Handley, and Rawlings bought out Van Boxall and Davidson, which was about the eighth day of July, I think.

Int. 7. Well, after that sale by Davidson and Van Boxall, state whether or not you continued to work the property of the Winnemuck mine.

A. We did.

Int. 8. Did you acquire any other property in addition to that?

A. Yes; during the time we were working together, in the month of September, 1878, we bought the seven-sixteenths interest in the New Discovery mine.

Int. 9. How was the business of you gentlemen carried on in mining; under what name; who were managing the mine?

A. We were all managing the mine; sometimes one party looking after it and sometimes another. Mr. Foss probably spent more time at the mine than any of us, and after a while I made it more

especially my business to look after the ore and the sale of it down town.

167 Int. 10. State what you know, if anything, about Rawlings, Handley, and Robertson selling their quarter interest in the Winnemuck and New Discovery to Foss.

A. Along about the 30th day of September Mr. Foss came to my room and stated that the Missourians, as we termed them, were wanting to sell their quarter interest in the property, and had offered it for $30,000.00, and he said that he thought we had better go in and buy it. I said to him that it was all well enough to buy it, if they wanted to sell, but that I was confident that I could get it at better figures. I said, "I am almost certain, Mr. Foss, that I can buy it for less; let me manage it and I think I can buy it for $15,000.00," and went on to say what I would say to them concerning all the trouble and suits in the case. He said, "Very well, if you can get it for that so much the better." It was an agreement and understanding between us, that if we could get it for $15,000.00 we were to take it. The next day I saw Mr. Rawlings—he was recognized by us all as the leading spirit of the three parties—and had quite a talk with him in just the same manner I had stated to Mr.

168 Foss. And we talked with him and I found Mr. Rawlings very much disposed to take it; he told me he thought he would take it, and that the others would take it. I saw Mr. Foss on election day and told him what I had said, and that I felt very confident that they would take our price. Election day was on the first of October. That same day I had another talk with Mr. Rawlings; I never, at any time, had any talk with any of the rest of them about it. This conversation that Mr. Handley speaks of as having had with me was days and weeks prior to this; it was at least weeks prior to this time. I refer to the conversation where Mr. Handley speaks of offering to sell for $30,000.00 to me. I never did speak to any one but Mr. Rawlings, after we really started in to purchase the property.

Int. 11. At the time you and Foss had the conversation which you speak of, about the purchase, in your room, where did you calculate the money was coming from to pay for this property?

A. We sat down there and made figures to see if we could

169 pay for it out of the money belonging to the company in bank; and the result of our figuring was, that we couldn't do it to the full extent; that we could pay a portion of it from that money, and the balance outside, each of us raise our share.

Int. 12. State whether or not there was any agreement or understanding between you, Foss, and Hunter and your bondsmen in those attachment suits, that the money in bank should not be used?

A. There was no arrangement of that sort made to my knowledge; I never have heard or known of any such arrangement until I heard of it here. Mr. Halleck, who went on that bond, was a friend of us all, and had confidence in us all that we would protect him from loss. I never have known of any such arrangment.

Int. 13. Did you use that money for any purpose?

A. We used a portion of it for the purchase of the New Discovery.

Int. 14. You used all there was?

A. Yes; and Mr. Halleck loaned us some more to complete the amount needed. He was either to consider it as a loan, or take an interest in the property, as he preferred. He afterwards con-
170 sidered it as a loan, and we paid him back his money.

Int. 15. State whether or not you, Foss, and Hunter offered or agreed to indemnify Mr. Halleck and your other bondsmen, in case they wanted it, upon other property.

A. There was no regular proposition to Mr. Halleck for anything of that kind. We did say to Mr. Halleck, after purchasing the New Discovery mine, that if he wanted it, we would give him a lien on the mine as security.

Int. 16. After you had these conversations with Foss and Rawlings regarding the purchase of their interest *of their interest* in this property, when was the first time after these conversations that you learned that the purchase had been made by Foss, and under what circumstances?

A. On the evening of the second day of October I was sitting in Tribe and Jeffrey's store; it was then the stage office of the Colorado Springs line. In came the three Missourians, with carpet-sacks and baggage, and asked the permission of leaving their traps there until morning. I went forward and said, "What does this mean?" They said that they had sold out. I asked them who they had
171 sold to, and they said to Mr. Foss. Then I asked them what price they got, and they said $15,000.00. I was at once feeling good, and turned about in less than thirty seconds and looked up Mr. Foss. I went to his room where he was living, and met him at the foot of the stairs. I said to Mr. Foss, "You have bought out those Missourians?" He said, "Yes." I said, "Under the arrangement which we had agreed upon?" He said that it was "good enough;" that the Missourians were in a hurry to sell, and that he was afraid to take the time to come down town and see me, and so he had just closed with them then. I said, "You consider me in on my interest, don't you?" He said, "I don't know, you were not there," or something of that kind. "Well," I said, "Mr. Foss, I want you distinctly to understand that I have an interest there. My money is ready to pay my portion of it, and I am going to have my interest in the purchase."

Int. 17. What reply did he make?

A. Nothing, except in some vague way; that he didn't know nothing positive, one way or the other.

172 Int. 18. Did you hear Mr. Handley's testimony yesterday, in which he said that he thought you made the remark, "You have played hell," when he told you that they had sold to Foss?

A. I heard it.

Int. 19. State what the fact was.

A. I state most positively and distinctly that there was nothing of the kind said.

Int. 20. State whether or not there was any proposition or talk between you and Foss that you could purchase their interest at a less sum than $15,000.00 *dollars?*

A. There never was any talk between Foss and myself that there was a chance of getting it for less than $15,000.00. His talk was $30,000.00, and he did not think we could get it for less. There was no less sum than $15,000.00 spoken of by either of us.

Int. 21. If there was $16,000.00 in the Exchange Bank at the time of this purchase belonging to the Winnemuck Company, a quarter of which money belonged to Robertson, Rawlings and Handley, and the interest in that money passed under this purchase, was there not enough money in bank to more than pay for the interest purchased by Foss?

A. Yes, sir; if I understand the question there was a thou-
173 sand dollars more than enough to pay for it—taking Mr. Trimble and others statements as to the $16,000.00.

Int. 22. At that time did you know the exact sum in bank to the credit of the Winnemuck mine?

A. I didn't know exactly; probably not within two or three or four thousand dollars.

Int. 23. At that time were you able and willing to raise your proportion of this $15,000.00 to pay for the purchase; and, if yea, state what your proportion would have been with Mr. Foss?

A. My proportion was $5,000.00, which at all times I was ready to pay, and I so told Mr. Foss.

Int. 24. Who were to have the other two-thirds interest in this quarter interest?

A. They were to go between us three, Mr. Trimble and Hunter, Foss, and myself. Mr. Trimble and Hunter's interests were together; they owned jointly that quarter interest—so I was informed by Mr. Trimble and Mr. Hunter.

Int. 25. When did you first learn that Mr. Hunter was interested in your operations there?

A. I learned that first when we went to record our papers, which was some time in July, 1878, when the first record was made;
174 it may have been in June; I am now inclined to think it was about the 20th day of June.

Int. 26. When did you first learn that Mr. Hunter had joined in this deed to Foss with Rawlings, Handley, and Robertson?

A. I think in the subsequent talk, the evening of the second of October; when the Missourians came down to start away, they told me that Hunter had joined them in the deed to Foss; it is my impression that this was that same evening.

Int. 27. What has become of your interest in the money in the Exchange Bank, which was there at the time of this purchase by Foss, and the money subsequently added to that sum from time to time from the workings of these mines?

A. I received a share of that money, the part which was admitted by Foss and Hunter to belong to me, namely, a quarter, on the last days of January, 1879, or the last days of December, 1878; it must have been December; the quarter which was paid me by Mr. Trimble I received under protest, saying to him that I claimed a third,
but that the difference between the third which I claimed
175 and the fourth which they admitted, amounting to some little

over $5,000.00, I would leave in bank, as my payment on the one-third of the interest bought from the Missourians.

Int. 28. What remark did he make to that?

A. Nothing very definite. I think he said: "You and Mr. Foss will have to fight this out." Nothing more definite than that.

Int. 29. If Foss and Hunter and Trimble have not already received enough money to pay for your interest in this property, are you willing now to come forward and pay the same or deposit the same in court?

A. I am. I have always been willing from the day the sale was made to Foss. I informed Mr. Foss of my willingness on the evening of the 2nd, when the Missourians came down to start. I told him my money was ready to pay for my interest at any time.

Int. 30. You heard some testimony yesterday regarding an answer now known as Exhibit B in this testimony; state who prepared that answer, under what circumstances it was prepared, and who were present from time to time, from the time of the commencement of the preparation of it until it was signed and
176 sworn to and filed.

A. That answer which I am asked about was drawn by Mr. Rockwell, as attorney for us all. The evening that Mr. Rockwell reached Leadville to prepare this answer he went to the hotel, then come down to the room where he met those parties, and said in half or three-quarters of an hour he would be ready to commence on the answer, and he would want us there. I was requested by the other parties in interest to go to Mr. Rockwell's room and furnish him such information as he would require in drawing the answer, which I did.

Int. 31. What was said by you, if anything, at the time of the preparation of that answer regarding the title, how it stood, and who held it?

A. Mr. Rockwell, when he came to the portion of that answer where he was setting forth in whom the different interests lay, came to the interests of Rawlings, Handley, and Robertson. I said to him that that interest had been purchased by Mr. Foss for Foss, Hunter, and Bissell, and that Mr. Foss had not deeded it; that it all stood in his name, and that he was acting a little
177 strangely, and had thus far declined to make a deed to it, but that I claimed my interest in it, as I thought also did Mr. Hunter.

Int. 32. How many times was that answer read over in the hearing of all you gentlemen, that is, Foss, Hunter, Trimble, and yourself, and associate counsel with me, Mr. Marshall?

A. I could not tell; I think at least twice; I think so; perhaps more, but I couldn't say positively.

Int. 33. Please state whether or not you and I had any talk or conversation, or you instructed any of the counsel connected with this case, to so prepare that answer as to catch Mr. Foss, or in anywise prejudice his rights in this property or premises, or whether there was any understanding, direct or tacitly, between yourself and myself that this answer should be so prepared or read to Mr. Foss

and Hunter, or anybody else, that he or they could in any way or manner be deceived or prejudiced by what was alleged in it, or that anything should be placed in the answer which did not cor-
178 rectly represent the facts as you understood them and stated them to counsel.

A. I state most positively that there was no such instructions given by me to the attorneys, or any suggestion on my part that any such course should be pursued.

Int. 34. State whether in reading that answer over to Foss, Hunter, Trimble and yourself, in your room or Mr. Marshall's office, or in the bank, by myself or Mr. Marshall or Cavender whether that answer, or the original draft of it, was ever read to the effect that Mr. Foss held this Rawlings, Handley and Robertson interest he claims to have purchased for himself, in trust for any company, or for anybody else other than for himself (Foss), Hunter, and yourself (Bissell).

A. I state that the reading of that in my presence, and in the presence of the other gentlemen named, was always in the terms Bissell, Foss and Hunter. In every instance where I heard it read, my attention was particularly given to that.

Int. 35. Doctor, is there anything else which you wish to state in connection with this?

A. I don't think of anything now.

179 Int. 36. Did you hear Mr. Trimble's testimony yesterday, in which he stated that in a certain conversation with you in Leadville, at one or more different times you stated to him that you had got me to put certain words in that answer that would bind Mr. Foss and fix your interest in the property?

A. I heard Mr. Trimble's statement regarding that, and in regard to that I want to say——

Int. 37. Wait a moment. State just what that conversation was, or those conversations were, as near as you can.

A. In regard to that part of the conversation which alluded to the fixing of this in the answer my statements to Mr. Trimble were exactly as I have stated to you, what the information was that I gave Mr. Rockwell in making out the answer. I told Mr. Trimble that I told Mr. Rockwell, at the time he was drawing the answer, that this was bought by Mr. Foss for the company, but that he had not made a deed, and although he had not refused to make a deed, he had failed to do it.

Int. 38. State whether or not in any of those conversations
180 with Trimble, or with anybody else (if you had any such conversations), you stated that you had induced me to put anything in that answer that would divest Mr. Foss of his interest in that property, and fixed it so that you could recover that interest?

A. I state most positively that I never have made any such statement to Mr. Trimble or anybody else.

Int. 39. At the time this answer was prepared, where was this deed which Handley, Robertson, and Rawlings had made to Foss?

A. That is more than I can tell.

Int. 40. At that time had anybody seen the deed?

A. I never had seen it.

Int. 41. At that time nobody had seen it?

A. I could not tell; we were unable to find it. I also want to state here, regarding what Mr. Hunter said when on the stand last night about never had any conversation with me on the subject of this sale, I admit that to be true, and want to state that I had no occasion to talk with Mr. Hunter regarding it.

Int. 42. Did Mr. Foss or Hunter, or anybody for them, ever
181 ask you to join in a draft on the First National Bank to check out the money deposited in that bank to the joint credit of Bissell, Foss, and Hunter, as dividends in the consolidation of this property previous to the filing of this bill?

A. No such suggestion was made to me.

Int. 43. State if, on the 8th day of January, 1879, when you left for the East, if you authorized me to check that portion of the money in bank which was in dispute, in case they desired to have it checked out?

A. I did so authorize you.

Int. 44. I think that is all.

A. I want to state here that I stated to Mr. Trimble just what he swore I did, as to what I would have done in the event that Mr. Foss had declined to swear to that answear, as it was prepared; that I would have thrown my entire interest to the defeat of the Winnemuck Company. I stated that to Mr. Trimble, and that was my determination.

Cross-examination by Mr. DIER:

X Int. 1. Taking the matter last alluded to as the begin-
182 ning point in the cross-examination, I will ask you, Doctor, whether, in the conversation with Mr. Trimble, to which you have just alluded, you did not exhibit to him also a copy of the deed from Handley, Robertson, and Rawlings to Charles J. Reynolds?

A. I did, sir.

X Int. 2. In that conversation, after you had shown Mr. Trimble the copy of the deed to Reynolds, do you remember that Mr. Trimble said that the deed was of no force, inasmuch as Mr. Reynolds was not an innocent purchaser?

A. I know he said it was no good; I said I did not know whether it was good or not, but that I had got a power of attorney from Mr. Reynolds to act, and should act just the same for him as though it were my own.

X Int. 3. When Trimble told you that the deed was of no account, in his opinion, did not you then say that it made no difference whether the deed was good or not, that Mr. Foss had sworn to this answer, to which you had made reference, and that you could hold your interest by virtue of that answer?

A. I did not, sir; I did not even intimate to Mr. Trimble in
183 my conversation (although I am ready to acknowledge the fact here) that I did not believe the deed good; but in our conversations in regard to the probability of my recovering that interest, and my right to hold that third of the quarter, we discussed

it in all of its bearings, and among other things I suggested what Mr. Foss had sworn to in this bill.

X Int. 4. You mean answer?

A. I don't know what you call it; I suppose it was the answer.

X Int. 5. Didn't you say to Mr. Trimble that if Foss had not sworn to the answer that you would have defeated the Winnemuck Company by joining with the opposite party?

A. I did state that I would do what I could to defeat the Winnemuck party if I was not allowed that interest, if Mr. Foss refused to swear to the answer.

X Int. 6. In that conversation do you remember that Mr. Trimble told you that Mr. Foss had told him before signing that answer that he thought it was a trick to get him to admit your claim, and that you told him that you noticed that Foss had taken him
184 out and talked the matter over?

A. I do recollect that Trimble told me that Foss objected to signing until they went out and consulted, and then concluded to swear to it.

X Int. 7. Can you now state whether the answer, as shown to you here, is the paper that was read to Foss at the time, or whether it was the original draft of the answer prepared by Mr. Rockwell?

A. My impression is, that in the first instance, it was the draft prepared by Mr. Rockwell that was read to us; that it was afterwards copied by Mr. Cavender and read the second time, as presented here.

X Int. 8. Where was this paper read the second time, to Foss, after it was copied by Cavender?

A. My impression is that it was read the second time in the room back of the Exchange Bank.

X Int. 9. Do you recollect who was present at that time?

A. I could not say to a certainty whether Mr. Cavender was there; I am rather inclined to think he was, but am not certain; the rest of us were all there.

X Int. 10. The first time that answer was read over to Foss
185 and yourself you are of the impression that it was the original draft as prepared by Rockwell, and the second time it was read in the back room of the bank as prepared by Mr. Cavender?

A. That is my impression; it was in his handwriting.

It is stipulated and agreed by counsel for both parties herein that either the plaintiff or defendant may put in evidence the deed from Hunter, Handley, Robertson, and Rawlings to Foss of their interest in the Winnemuck mine, without its now being introduced and marked as an exhibit.

(Signed) JOHN W. WEBSTER,
Examiner.

X Int. 11. The deed that was made by Handley, Robertson, and Rawlings to their quarter interest in that property was first seen by you when, Doctor?

A. I don't know, sir; I don't know whether I have ever seen it.

X Int. 12. Do you remember sending telegrams to Colorado Springs from Denver about that deed?

A. I did, at the request of the attorneys.

186 X Int. 13. Were you in Denver at the time, and did you continue to remain there after sending those telegrams?

A. I must have been here two or three days after that.

X Int. 14. What, if anything, do you know about the preparation of the deed from Handley, Robertson, and Rawlings to Reynolds on the 10th day of November, 1878?

A. I don't know who drew that deed, whether Mr. Cavender drew it or not. I instructed Mr. Cavender to have it done.

X Int. 15. At what time did you instruct Mr. Cavender to have the deed from Handley, Robertson, and Rawlings prepared?

A. I could not tell you at what time it was. I am trying to think, if possible, when I went back to Leadville. It was a short time, a few days, after my return from Leadville, after the date of these dispatches to Hunter. It was from four to six or seven days after the date of my dispatch to Hunter.

X Int. 16. Then if it was four days after your sending to Hunter, it must have been prepared soon after you got to Leadville?

A. It was some time after that; I can't now give the exact date definitely.

187 X Int. 17. State what conversation you had with Mr. Cavender touching the preparation of this deed or having it made—this deed from Handley, Robertson, and Rawlings to Reynolds. What directions did you give?

A. I told Mr. Cavender that I wanted him to draw a deed of that character, and go to Missouri and get it executed; that is, he was to go first to Colorado Springs, where he would find Dr. Reynolds, and where he would probably get a letter from Dr. Reynolds to these gentlemen, asking them to make a deed to him of their interest in the Winnemuck and New Discovery mines. As soon as he saw Dr. Reynolds he was to go at once to the home of Handley, Robertson, and Rawlings, in Missouri, and get the deed from them.

X Int. 18. Up to that time had you had a conversation with Dr. Reynolds in reference to this matter?

A. I think that all I ever had to do with Reynolds regarding it was that I had written him. I don't think I ever had any conversation with him.

X Int. 19. When you told Cavender to come to Denver and
188 Colorado Springs, that he would find a letter, state what letter you had reference to.

A. That Dr. Reynolds would give him a letter to take to Missouri.

X Int. 20. Was the letter to be written by Dr. Reynolds?

A. Yes, sir; I never wrote any letter in the matter at all, notwithstanding the testimony yesterday. I mean by that that I never wrote any letter to Handley, Robertson, or Rawlings.

X Int. 21. Had you written to Reynolds the form of a letter which he was to send to Robertson, Rawlings, and Handley?

A. No, sir; I had not.

X Int. 22. In your correspondence with Reynolds did you suggest to him that he should write a letter to Robertson, Handley, and Rawlings, and give it to Cavender?

A. I think I did, sir.

X Int. 23. Did you in your letter to Reynolds tell him the purpose that you had in getting the deed?

A. I stated to Reynolds that I was entitled honestly to a third interest in the one-fourth that those Missourians had sold to Foss, and that I was in pursuit of this deed to make sure of my rights in the case, which Mr. Foss did not seem willing to respect, or words
189 to that effect. I don't know that these were the words, but that is the substance of what I said to Dr. Reynolds.

X Int. 24. Did you send any mony to Dr. Reynolds to pay Handley, Robertson, and Rawlings for making this second deed?

A. Dr. Reynolds had charge of all my money matters there, and I allowed him to make use of it.

X Int. 25. Did you direct him to make use of such an amount as in his judgment was necessary to accomplish the purpose that you had in view?

A. I think I limited it. I don't know about that.

X Int. 26. What limit did you put on the amount of your money that he should pay to get this deed?

A. The amount used was $600. I don't know, but I rather think he was limited to that. The amount that was paid for expenses, and so forth, for the payment to those parties was $600. I don't know whether that was the limit I fixed or not.

X Int. 27. Did you pay Cavender himself, or did Dr. Reynolds pay Cavender for you?

A. Well, our money matters were very much mixed up.
190 Reynolds had my bank account there, and I gave authority by word of mouth at the bank to honor his checks on my account, so that I really could not tell whether I gave the check or whether Reynolds gave the check. Dr. Reynolds had just as free aecess to my bank account with the privilege of drawing checks on it as I had myself.

X Int. 28. Do you know, in point of fact, how much was paid to Cavender of your money for going to Missouri and getting the deed from Handley, Robertson, and Rawlings?

A. I think Mr. Cavender never received anything but his expense money.

X Int. 29. Do you know whether Handley, Robertson, and Rawlings received any more than $300 for making this deed or not?

A. I do not, sir. I know only their own statement; and, I think, Mr. Cavender stated the same thing, that they had got $300—a hundred dollars apiece.

X Int. 30. If, then, $600 was paid, $300 went to Handley, Robertson, and Rawlings, and the other $300 went to Cavender for his expenses in going to Missouri; is that true?

A. Mr. Cavender on his return refunded me some money. I cannot tell you how much, but I should think in the neighbor-
191 hood of $75 or $80.

X Int. 31. So, then, the total expenditure made for this deed by you was how much?

A. I think about somewhere in the neighborhood of $525.

X Int. 32. Of that amount state what portion C. J. Reynolds paid, if any, of his own money.

A. There was only one payment made, as I have said before, and whether that was made by check from me or check from Reynolds I am not positive.

X Int. 33. Will you state the reason you had for having Reynolds make the payment and write the letter rather than making the payment by your own check and writing the letter yourself?

A. It was simply because I knew that my own negotiations would not be valid; that I was a party knowing to the fact of a deed having passed to Mr. Foss.

X Int. 34. Then you, knowing that fact, had Reynolds' name inserted, so that the question as to whether he was an innocent purchaser or no could not be raised against him, whereas it could be raised against you?

A. I think that was really it; I was trying to protect what I considered my just and equitable rights.

192 X Int. 35. At the time this deed was drawn on the 10th day of November this answer marked "Exhibit B" in this case had already been prepared, and was sworn to by yourself and Foss, was it not?

A. I think so; yes, sir.

X Int. 36. Then, when you procured the deed to be made to Reynolds by Robertson, Handley, and Rawlings, you did so, as you state, to protect the interest which you believed you had in the property?

A. To protect it more certainly.

X Int. 37. And that if you could get that deed recorded prior to the recording of the deed that had previously been made by Handley, Robertson, and Rawlings you would thus secure the purpose you had in view; is that it?

A. Well, yes, sir; that was it.

X Int. 38. When you sent Cavender back to Missouri to get that deed in November, 1878, you knew that if the previous deed was put on record before you got this second deed back the second deed would be of no force; didn't you know that?

A. Yes, sir; I think I understood enough about transactions to understand that.

X Int. 39. How did you come to think that you would have time to send back to Missouri and get the deed from Handley, Robertson, and Rawlings and have it put on record before

193 the other deed was to go on record?

A. I did not think I would; I was very much afraid I would not; I told Mr. Cavender not to make an hour's delay, because I was afraid he would not get back in time.

X Int. 40. You found out that he did afterwards, didn't you?

A. Yes; I afterwards found out; I never saw the deed; the deed

was left in Colorado Springs; it was sent by Dr. Reynolds to the recorder's office; I was notified by Dr. Reynolds that it had been sent.

X Int. 41. When were you so notified that it had been sent by Dr. Reynolds?

A. I could not tell you anything about the date; it was when Cavender got back with the deed; as soon as the letter, I guess, could come up from Colorado Springs to Leadville, where I was.

X Int. 42. Did not Dr. Reynolds send you a dispatch from Colorado Springs, saying that he had got back with the deed?

A. I don't know, sir; he might have done so.

X Int. 43. Is it not your best impression that he notified you by telegraph that he had?

A. He notified me in some way that he had; whether by telegraph or letter I am not certain; I think it was by letter; I
194 don't think I received such a telegram, but I am not positive.

X Int. 44. You had the deed recorded, or it was recorded, on the 2d day of December, at 7 o'clock in the morning. Do you recollect that that was the day of the recording?

A. I cannot recollect anything about it.

X Int. 45. Did you understand from Cavender, at Leadville, when he returned, that he had received that deed from Handley, Robertson, and Rawlings?

A. I think the conversation when he met me was, he said everything was all right.

X Int. 46. Did he tell you he had delivered the deed to Dr. Reynolds, at Colorado Springs?

A. I think he did, sir.

X Int. 47. You had been notified by Dr. Reynolds that it had been forwarded to Granite for record?

A. I was notified by Dr. Reynolds to that effect.

X Int. 48. Now, in the conversation with Mr. Cavender did he tell you at that time, or afterwards, that the original deed that had been delivered by Handley, Robertson, and Rawlings to Foss was delivered by him, Cavender, to Trimble on the 4th day of December?

A. No, sir; I don't think I ever knew who delivered that deed.

X Int. 49. At the time you talked with Cavender, at
195 Leadville, after you got your information from Reynolds that the deed had come back from Missouri, you knew that the old deed—the original deed to Foss—had not been recorded?

A. No, sir; I did not know it, but at the time that deed was sent for I knew that this deed was going to be in court for some time, and I told Charley ——

X Int. 50. By Charley, you mean Cavender?

A. Yes, sir; Cavender. I told Charles Cavender that I was afraid, unless he hurried and got it up very quick, he would not be back in time with it.

X Int. 51. Then you told Cavender before you started for Missouri that it was important he get the deed and get it of record before the other deed to Foss was put on record, did you?

A. I think I did, sir.

X Int. 52. Was that Charles Cavender?

A. That was Charles Cavender.

X Int. 53. "Charles," sometimes familiarly called, was the same Charles Cavender that was attorney for Bissell, Foss, and Hunter in the suit?

A. Well, Mr. Cavender was in the employ of Bissell, Foss, and Hunter, but not there. He was not employed on the main
196 case. We had two or three attorneys. We had Mr. Laws employed to attend to matters for us right there. We found it necessary a great many times little matters coming up, and having no other attorney there, to employ Mr. Laws, and Mr. Cavender also, too look after them. I don't think Mr. Cavender was on the main case, but merely attended to little issues that would arise there in town.

X Int. 54. Is the case, in which the answer marked "Exhibit B" was filed, the one in which the deed to Foss from Handley, Robertson, and Rawlings was used in evidence, and for which you sent those dispatches?

A. It is for which I sent the dispatches. I don't know whether the deed was ever used or not.

X Int. 55. That is the case that was then pending?

A. Yes, sir.

X Int. 56. Was this the case that you told Cavender the deed to Foss was in, and you were afraid it would be recorded before he could get back from Missouri?

A. I think it is, sir.

X Int. 57. Do you recollect whether after this time in this same suit yourself, Hunter, and Foss paid Cavender $600 for his services in the case?

197 A. Yes, sir; we paid Mr. Cavender, I think, $600 for writing for us. I don't think it was on the main case, but for the work he did there in the matters that were arising every day. I don't think he was employed on the main case. I think he was told by us at the time he was employed that he was employed on little matters that would arise there. I don't think he was ever employed on the main case; in fact, I was instructed by them to say to him that we did not want him on the main case. We took him down before Bowen with us for the influence which we thought Mr. Cavender would have over Mr. Bowen politically. We were afraid of Mr. Bowen's political prejudices, and took Mr. Cavender for that purpose, and that was the only connection he had with the suit itself.

X Int. 58. Didn't Cavender take most of the affidavits that were taken in this case?

A. Mr. Cavender took some affidavits in a clerical capacity.

X Int. 59. Well, it was for all the services he had done for Foss, Hunter, and Bissell that the $600 was paid?

A. Yes, sir.

X Int. 60. Did you notify Mr. Rockwell, another of your
198 attorneys, of this misunderstanding that there was between Foss and yourself touching that purchase?

A. I have sworn to that. I have sworn to what I said to Mr. Rockwell at the time.

X Int. 61. At the time you talked with Cavender about going back to Missouri for this deed, had you any conversation with Mr. Rockwell?

A. I had not, sir.

X Int. 62. Did you notify Mr. Rockwell after you got the deed that you had so received it?

A. I did not, sir.

X Int. 63. Did you know anything of that deed to Mr. Foss being sent from here to J. Y. Marshall, at Leadville, on the second day of December by Mr. Rockwell?

A. I did not know whom it was sent by. There were some papers sent up there to Mr. Marshall when he was not there, and I remailed them to him either at Fairplay or Denver, I don't know which.

X Int. 64. You don't exactly get my question. Did you know that on the second day of December, 1878, the deed which had been previously made by Handley, Robertson, and Rawlings to Foss was sent by Mr. Rockwell to J. Y. Marshall, at Leadville?

A. Why, I didn't know it of my own knowledge. I have heard it so stated here.

X Int. 65. Did you know it from the statements made
199 either by Cavender, Marshall, or Rockwell?

A. No, sir; I did not.

X Int. 66. And you did not know of your own knowledge that Mr. Cavender receipted for the letter containing the deed on the 4th of December, 1878, did you?

A. No, sir; I did not know anything of the kind.

X Int. 67. It was understood between Cavender and yourself that if this deed that he was to get from the Missourians, as you call them, was not back and recorded before the deed made by them to Foss was recorded, his trip to Missouri would be useless, was it not?

A. Why, I think so; I think that was understood.

X Int. 68. Now, Doctor, after you got that deed that was really for your benefit and not for Reynolds'?

A. I admit that, sir.

X Int. 69. And which was got for the purpose of compelling Foss to convey to you an interest which you claimed in the property?

A. Yes, sir; an interest that I was rightfully entitled to.

X Int. 70. Didn't you serve upon the bank where the deposits were to be made a notice in writing, of which that is a copy?

(Handing paper to the witness marked "Exhibit J.")

A. Yes, sir.

200 X Int. 71. You gave that notice to the bank?

A. Yes, sir.

X Int. 72. When after that was the three-twelfths which you had at that time claimed as belonging to you, as attorney and agent for Reynolds, paid out of that bank, and to whom?

A. I think that along in the winter some time after—you need not

take this down, it is merely talk, and not an answer—I think sometime during the winter I became satisfied through my attorneys that Dr. Reynolds' title was not valid, and I then instructed ——

X Int. 73. It had better be taken down.

A. Well, I will state it differently; it was some time during the winter; after I was determined or concluded that Dr. Reynolds' title to that interest was not valid.

X Int. 74. Was not this money that you claimed as the attorney and agent of Reynolds' kept in this bank by reason of that order until you went to Leadville the latter part of May, 1879, when you signed a paper agreeing to pay to Foss and Hunter?

A. No, sir.

X Int. 75. That is just when it was, as sure as you are a foot high.

A. My impression is it was not; to state just how these transactions came in I would have to have a little time; I know I
201 gave them the right, before I left here in January, to draw the five-twelfths that were not in dispute; they did not avail themselves of that privilege for some months, and finally they did come in and avail themselves of it, and drew the five-twelfths; they could have drawn it at the time this notice was served on the bank, but they did not do it.

X Int. 76. That is five-twelfths of the total amount to the credit of Bissell, Foss, and Hunter you agreed they should draw out?

A. Yes, sir.

X Int. 77. The remaining seven-twelfths, four-twelfths of which you claimed for yourself, and three-twelfths as the attorney and agent of Reynolds, you declined to let them draw?

A. Yes, sir.

X Int. 78. Was that your proposition to them, to draw out five-twelfths only, the amount they were entitled to, that you did not claim?

A. Well, that I admitted them to be entitled to, and the balance was to await adjudication.

X Int. 79. Did you not offer to let them draw out five-twelfths if they would consent to your drawing out three-twelfths, and that the remaining four-twelfths, including the one-twelfth that you
202 claimed as your own and the three-twelfths that you claimed for Reynolds, should remain in the bank?

A. I think that was so, sir.

X Int. 80. Then you never consented that those men should draw any portion of the amount of money which you claimed as attorney and agent for Reynolds until May, 1879, did you?

A. I really could not tell what time it was; I know I instructed Mr. Rockwell during the time I was in New York, on being advised that Dr. Reynolds' title was not valid, to allow three-twelfths to be paid to those parties, but I cannot tell the time.

X Int. 81. Don't you know that no money was paid to Hunter and Foss until April of this year, when they received five-twelfths of the amount then in the bank to their credit, and you received three-twelfths, leaving the one-fourth which is now in dispute, together with the three-twelfths that you claim for Reynolds in the bank?

A. Yes, sir; that was kept there some time after that was paid; I don't know how long it was after that before I instructed my attorney that they could draw that three-twelfths.

203 X Int. 82. And did you not sign a paper yourself, in your own person, at Leadville, the latter part of May, when I met you there, directing the bank here to pay over that three-twelfths, leaving only the one-twelfth that is in dispute?

A. I think I did, sir. These transactions are a little mixed.

X Int. 83. Then you state you were advised by your counsel last winter.

A. Well, some time in the winter or spring.

X Int. 84. That you could not make Reynolds' deed serve the purpose of getting three-twelfths of that money?

A. I was informed in substance by Mr. Rockwell that I could not make Reynolds' deed serve the purpose of protecting my rights to that one-twelfth.

X Int. 85. And thereupon you kept the money in the bank from January, 1879, to May, 1879, claiming it as the attorney and agent of Reynolds, under this deed that you got from Missouri?

A. Yes; I don't know. I don't think I gave any order until May that it should be paid.

X Int. 86. Now, in the notice which you gave to the bank, which I have just shown you, and which is marked "Exhibit J," you claimed to own four-twelfths in your own interest and three-twelfths in the interest of Reynolds as his attorney or agent in fact?

204 A. Yes, sir.

X Int. 87. Will you state how you claim seven-twelfths in that matter?

A. I claimed the original three-twelfths that I had. I claimed the one-twelfth that was coming to me on the purchase of the Missourians' interest.

X Int. 88. That is four-twelfths?

A. Yes; four-twelfths, and I claimed as the agent of Dr. Reynolds three-twelfths.

X Int. 89. How do you make so many twelfths? You claimed four-twelfths, three-twelfths, was your original interest, and one-twelfth you claimed as being your interest in the purchase made by Foss?

A. Making four-twelfths.

X Int. 90. Then you claimed in addition to that three-twelfths, which is one-fourth, by reason of Handley's deed?

A. Yes, sir; that is, I didn't claim it as mine; I claimed it for Dr. Reynolds.

X Int. 91. Well, if you claimed the one-twelfth added to your three-twelfths, which made four-twelfths, that was one-twelfth of Handley's interest that he had sold to Foss?

A. Yes, sir.

X Int. 92. Then, if you claimed for Reynolds three twelfths,

205 which was one-fourth, you claimed the whole amount of Handley, Robertson, and Rawlings' interest?

A. Well, the deed had passed to Mr. Foss, to whom I was look-

ing for my one-twelfth, and was not figuring or looking after what Mr. Foss' interest would be left. I was looking for my own interest that I was properly entitled to and the interest of Dr. Reynolds, by power of attorney.

X Int. 93. Well, do you not see that if you claimed three-twelfths, which is one-fourth, as attorney and agent for Reynolds that you claimed all that Handley, Robertson, and Rawlings ever owned in that mine?

A. Well, I was claiming, as I stated to you, my original one-fourth, that was three-twelfths, and one-twelfth that I was entitled to from the Missourians, and then three-twelfths which Dr. Reynolds claimed.

X Int. 94. So then you were claiming seven-twelfths with two-quarter interests at stake, your own interest and Handley, Robertson, and Rawlings' interest. You had three-twelfths in your own interest to start on?

A. Yes, sir.

X Int. 95. And Handley, Robertson, and Rawlings had three-twelfths?

A. Yes, sir.

206 X Int. 96. That makes six-twelfths?

A. Yes, sir.

X Int. 97. Now, if you had got the whole of your own interest and the whole of Handley, Robertson, and Rawlings' interest, you would be entitled to six-twelfths; how, then, did you come to give a notice not to pay over seven-twelfths?

A. Just exactly as I have stated to you. I claimed my original three-twelfths and one-twelfth that I was entitled to by that purchase; then, acting for Reynolds by my power of attorney, I claimed for him three-twelfths, which I have shown by his papers.

X Int. 98. So that you were claiming and did claim to the bank more than your own interest and more than the entire interest of Handley, Robertson, and Rawlings in the Winnemuck and New Discovery mines?

A. I claimed seven-twelfths for myself and friends.

X Int. 99. You had only originally three-twelfths, and Handley, Robertson, and Rawlings had three-twelfths, which made six-twelfths?

A. Yes, sir.

X Int. 100. And you notified the bank to stop the payment of seven-twelfths?

A. Yes, sir.

X Int. 101. Well, that is all right. Now, Doctor, when
207 you had Cavender go to Missouri to get you that deed, you knew that the deed to Foss had been made by these three young men from Missouri, did you not?

A. I was told so, sir.

X Int. 102. Had you not telegraphed to Hunter for the deed in this case that was referred to a while ago, and did you not see it after it was sent up to Mr. Marshall?

A. I don't know now that I ever saw the deed.

X Int. 103. Did you authorize Cavender to say to those men in Missouri that they would not be criminally liable for making a deed to that a second time?

A. No, sir; nor I don't think he said it; I am told their attorney in Missouri told them that.

X Int. 104. That is Mr. Sparks?

A. I don't know who it was.

X Int. 105. Have you not had some correspondence with Sparks yourself?

A. Not on that matter.

X Int. 106. Have you not had correspondence with Sparks recently touching this transaction, and how these men were cheated in the trade?

A. I think I have not had any; I have had correspondence with Sparks, but I don't think I alluded to this matter.

X Int. 107. Did you allude to the manner in which the
208 trade was made with the Missourians in your correspondence with Sparks?

A. I think not, sir.

X Int. 108. You wrote to Mr. Sparks wanting his services in taking the depositions of Rawlings and Robertson, did you not?

A. Sparks was one of the firm; I have forgotten the name of the firm; no, sir; not taking the deposition; how did you say?

X Int. 109. Taking the depositions in this case?

A. Yes, sir.

X Int. 110. Mr. Sparks, a lawyer at Warrensburg, Missouri, is, then, your counsel for that purpose in Missouri, is he?

A. I think Sparks is the man; it is one of that firm; I cannot tell you which I wrote to.

X Int. 111. Who gave you the name of Sparks to write to?

A. I guess he gave it himself.

X Int. 112. Were you there?

A. I was, sir.

X Int. 113. At Warrensburg?

A. Yes, sir.

X Int. 114. And had a talk with Sparks himself?

A. Yes, sir.

X Int. 115. How did you come to call upon Sparks; did Cavender tell you that he was the man that had taken this deed?

A. I think I got the name of those parties from Mr. Cavender.

X Int. 116. You went to them, having obtained the names from Mr. Cavender?

209 A. I think I obtained their names from Mr. Cavender.

X Int. 117. In the conversations that you had with Trimble, I will get you to state whether you proposed to Trimble that the five-twelfths as fixed in the deed of Foss to Hunter should remain provided you could get the other twelfth, which was four-twelfths, and leave Foss with the three-twelfths?

A. It was a matter that Mr. Trimble and I could not settle at all; we were merely talking it over in a general way, and Mr. Trimble and myself figured out what would be the results in different

shapes and aspects of the matter; but I made no proposition to Mr. Trimble, because there was no proposition to make him. Mr. Trimble and I could not settle the matter at all.

X Int. 118. You have stated, in answer to a question put to you by Mr. Rockwell, that you have always been willing to pay your proportion of that purchase price?

A. I have.

X Int. 119. I will get you to state whether or not there was after last December (1878) any money to your credit or in which
210 you were interested in the Miners' Exchange Bank at Leadville, growing out of tho working of the Winnemuck and New Discovery lodes?

A. There should have been between five and six thousand dollars there.

X Int. 120. Why?

[A.] Well, on our settlement with Mr. Trimble I stated to Mr. Trimble that I would receive the one-fourth as claimed by Mr. Foss and others under protest; that I claimed myself one-third, which would make a difference to me of between five and six thousand dollars, but that money I would *I* leave with him as a payment of my interest in that sale from the Missourians, which was $5,000.

X Int. 121. In other words, if I understand you correctly, you did not draw any money out of the bank more than three-twelfths the amount that they had claimed you were entitled to?

A. That was what I drew out, and I drew out under protest, stating, as Mr. Trimble will tell you, at the time, that I would leave the balance there as payment of my interest in that $15,000 or in the property which was $15,000.

211 X Int. 122. If you were not entitled to more than three-twelfths, there was nothing left in the bank at all, was there?

A. If I was not entitled to more than three-twelfths there was very little, if any; I don't know but there may have been a little; I think Mr. Trimble said there was a little left to settle up old matters; I don't know; it was a very small amount anyhow.

X Int. 123. You stated, I think, that you never had any conversation with Mr. Hunter about this matter at all?

A. I never had any conversation with him; I had no business with Mr. Hunter, and, as I stated before, carried on business there for several weeks before I ever heard Mr. Hunter's name mentioned in connection with it.

X Int. 124. You never knew until the drafts were produced here last night as to how these payments were made, did you?

A. No, sir; I don't think I did. I heard the money was paid at Colorado Springs; I think some of those parties said so themselves; they told me it was paid at Colorado Springs.

X Int. 125. Exactly how you did not know?

A. No, sir.

X Int. 126. Well, when you swore in your answer here that it was really paid out of money in the Winnemuck mine, you were swearing to what you believed and not what you knew?

A. I don't remember what I swore; I don't know just how the reading of that is now.

X Int. 127. When Foss and yourself were talking about buying this mine together was there any proposition to let Hunter
212 have an interest that you might so buy?

A. I don't think Hunter's name was mentioned. At that time we were talking just as though Trimble owned the whole thing, and there was a proposition that we buy it as a company—that is, three—as a company.

X Int. 128. From the time you found out that Hunter had two-twelfths of the interest of Handley, Robertson, and Rawlings, did you ever make any request of Hunter—if so, when and where—for any portion of the interest that he held in that mine?

A. I don't think that I ever made any request; I have no recollection of it.

X Int. 129. Have you ever made any demand upon Hunter to convey to you any portion of the interest that he had acquired by the deed from Foss to that two-twelfths?

A. I never had any dealings with Mr. Hunter at all.

Redirect examination by Mr. ROCKWELL:

Int. 45. What led you to take the course to secure the deed from Handley, Robertson, and Rawlings in the manner in which you did?

A. I was influenced by no other motive than the motive of securing for myself, and forcing Mr. Foss into a position that I could secure to myself, the one-third of that purchase which I knew that I was honestly and fairly entitled to, and, I thought, legally. I would like to state further, that I had always said, in connection with this, that whenever Mr. Foss made me a deed to that one-third interest, or one-twelfth of the mine, that I should drop
213 the title to Reynolds as his agent by power of attorney.

Int. 46. I never knew anything about the attempt on your part to secure the second deed, did I?

A. You never did to my knowledge. I never had a word of conversation with you in regard to it.

(Signature waived.)

The above is the testimony of witness Charles R. Bissell.

(Signed) JOHN W. WEBSTER,
Examiner.

LOUIS C. ROCKWELL, a witness of lawful age, who, being first duly cautioned and sworn by me to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the parties to this cause, so far as he should be interrogated concerning the same, in answer to interrogatories propounded to him by counsel, testified as follows:

Inasmuch as my name has been connected with this matter, I want to say that at the time this answer was prepared by me the

original draft was read over at least twice, if not more, in the presence of Mr. Foss and Mr. George W. Trimble, Dr. Bissell, James Y. Marshall, and, perhaps, Mr. Cavender. I did not know, however, that Mr. Cavender was associated with me in the case, and never so considered it. Mr. James Y. Marshall was the senior counsel, and when I commenced to read that answer over I distinctly informed Mr. Foss and Mr. Trimble and Mr. Bissell that they had to swear to it, and if there was anything in it that was not strictly true they must correct it as it went along. When I read the
214 original draft of that answer I read it precisely as it appears in this answer marked "Exhibit B." The word "company" was never inserted in the answer, nor any word or words other than Bissell, Foss, and Hunter, in relation to who owned this interest. Mr. Foss claimed to have purchased for himself of Robertson, Rawlings, and Handley. I never read the original draft, nor any other document in my life any differently from what it was written. No objection was made and no protest was entered that I ever heard of or understood by Mr. Foss or Mr. Trimble regarding the swearing to that answer, or the allegation that he held the title for Bissell, Foss, and Hunter. When it was read there was some consultation between Mr. Foss and Mr. Trimble which provoked some remark by Dr. Bissell or Mr. Marshall, or somebody, regarding that allegation, but I never understood at that time that that answer did not correctly represent the facts exactly as they existed. I certainly alleged them precisely as I understood them, and when Mr. Trimble or any other living man says that that original draft of the answer was read by me differently from what appears here to-day he knows in his heart that he is not telling the truth. Neither Dr. Bissell nor any person for him, nor James Y. Marshall, in our consultation in drawing that answer, ever suggested even that anything should be put into it that would prejudice Mr. Foss' rights in the premises, in the world.

So far as my connection with this deed made by Handley,
215 Robertson, and Rawlings is concerned, at the time this litigation was commenced in which we desired to use it, and during the entire continuance of that litigation, that deed never came to my possession, and we never could find it. It followed the case, as I understood, to Lake City from Colorado Springs; the next time we could get any definite hearing of it it came back to Denver, and we wanted to use it here in the argument of the case, which was tried before Judge Bowen early in the month of November, 1878. I think we closed the hearing of the case about the 10th or 11th of November. When we came to put in our title papers that deed could not be produced, and inasmuch as it had never been recorded no copy could be shown to the judge, but Mr. Marshall and myself assured Judge Bowen that such a deed was in existence, and in the routes which the deed had taken from Colorado Springs it had not yet reached us; the judge replied that he could take our word for it, and consider the deed in evidence. After the consolidation of the property in November, 1878, and in the latter part of November of that year, I went to Leadville to bring a suit for Chaffee, Tabor, Bissell, Foss, and Hunter upon the consolidated property, and again wanted

to use that deed. Just previous to my starting to Leadville I received a letter from Dr. Bissell, saying that there would be some private papers sent to me which he desired me to retain until he called for them. In going through Fairplay I stopped and consulted Mr. Marshall about the existence of this deed, and I think
216 he told me that he believed it had been sent to me at Central City. I made some remark regarding the manner in which that deed was being carried around in the mail, and when I returned home I found that deed at Central City, or here in Denver, in my mail. In order to secure the deed for record I turned around and sent it by registered letter to James Y. Marshall, and that is the last and only connection I ever had with that deed in the world, in any way, form, shape, or manner. While at Leadville I received a package of papers from Judge Bowen, and I think Mr. Foss and Mr. Hunter went to the express office and took the papers out, and they as well as myself expressed surprise that that deed was not found among the papers, or among that particular package of papers. I never tried to secrete the deed or hold it, although I was requested, as I said, by Dr. Bissell, I think it was, to take care of the papers that were sent to me. As to getting the second deed from Dr. Reynolds, I never knew the least thing about it in the world until after the transaction was entirely consummated and the deeds recorded, and I did not know but what suit had been brought by Foss and Hunter to set that conveyance aside.

Cross-examination by Mr. DYER:

X Int. 1. What time did you register the letter containing the deed directed to J. Y. Marshall at Leadville?

217 A. All I know about it is, that in this Little Pittsburg suit there is a receipt filed among the papers which bears date, I think, some time about the first of December, 1878.

X Int. 2. Does not the certificate show, do you remember, that it was mailed by you on the 2nd day of December and received at Leadville on the 4th day of December?

A. I think so.

X Int. 3. Does that correspond with your idea of about the time you sent it?

A. I think it must be that time, because I know I came over from Leadville the very last days of November. I think the bill which I referred to was filed about the 28th of November, and immediately upon the filing of the bill I came home.

X Int. 4. Was any letter in the envelope containing the deed when you received it?

A. No, sir; I received the deed; nothing on earth came with it.

X Int. 5. In whose handwriting was the direction to you on the back of it?

A. I have no idea at all.

X Int. 6. Do you know who sent you the deed?

Ans. No, sir; I don't know who sent me the deed.

X Int. 7. Do you know whether Dr. Bissell sent it to you?

A. I have no remembrance about it at all; I merely know that I

received the deed, and as soon as I received it (I had no idea at all about this Reynolds matter) I sent it right back to James Y. Marshall.

X Int. 8. Can you state positively that that deed was not sent to you by Charles Cavender?

A. Why, sir, it might have been; I don't know; I could
218 not tell who it was sent me the deed. It is a matter I charged my mind very little about, except when I came to get the title papers up; then I needed it badly, because I did not know the purport of the deed.

X Int. 9. You wrote a notice to the First National Bank, dated the 8th of January, 1879, for Dr. Bissell?

A. Yes, sir.

X Int. 10. You also wrote a letter, a copy of which is on file here, which was signed by Dr. Bissell, to Hunter and Foss, touching the matter of his claim for the seven-twelfths?

A. Yes, sir; I think I did. I wrote one or two notices for him one night, just previous to his starting East.

X Int. 11. At the time you wrote this letter to Foss and Hunter and the notice to the bank, which are marked as exhibits in this case, did Dr. Bissell tell you how he claimed, and how he came to claim, three-twelfths as the attorney in fact of Reynolds?

Ans. Well, sir, I could not tell. He told me something about Dr. Reynolds having that deed; but who Dr. Reynolds was, I did not know. I don't think Dr. Bissell and I had any conversation of any importance about that deed until I was requested by Dr. Bissell to prepare Dr. Reynolds' answer and defend that suit for Reynolds, that was brought up in Leadville by Foss and Hunter to set aside that conveyance.

X Int. 12. At the time Dr. Bissell got you to write the no-
219 tice to the bank and the letter to Foss and Hunter did he not tell you how he came to claim the three-twelfths interest for Reynolds as attorney in fact?

Ans. I understood that this Dr. Reynolds was a friend of his, and that Dr. Reynolds was merely acting for Dr. Bissell, and that it was Dr. Bissell's instead of Dr. Reynolds'; I understood that.

X Int. 13. Did not Dr. Bissell, at the time you prepared that notice to the bank, and at the time you wrote the letter to Foss and Hunter, tell you that he had gotten that deed from Missouri, and had it recorded before the deed was recorded that had been given to Foss and Hunter?

A. No, sir; I don't think I knew the least thing in the world about the recording of those deeds. I don't think that there were half a dozen words ever passed between Dr. Bissell and me about that Dr. Reynolds deed in any way, shape, or manner.

X Int. 14. Did he not tell you in that conversation (otherwise how could you have prepared the papers) that he claimed the one-twelfth of that property by reason of the purchase made by Foss, and that he claimed the three-twelfths of it as the agent of Dr Reynolds?

A. Dr. Bissell, when he came to me, said he did not want any of

that money drawn unless Foss made the matter right with him regarding his one-twelfth. I said to him: "That would not be right, Doctor. Let them draw out what they are entitled to, and you draw out what you are entitled to, and let the one-twelfth remain in the bank to be litigated, because it would embarrass the bank to serve a notice of that kind upon them; it would look as though you purposely wanted to embarrass Mr. Foss." "Well," said he, "then he cannot have but five-twelfths, because I claim four-twelfths for myself, and I claim three-twelfths as the agent and attorney of Dr. Reynolds." Now, that is the first time I ever heard Dr. Reynolds' name mentioned in the world.

X Int. 15. Did he not tell you in that conversation that he had the deed that Reynolds had had from Handley, Robertson, and Rawlings for the three-twelfths?

A. I think he did, but the manner of getting it I never knew in the world.

X Int. 16. Of course I am not connecting you with it, and don't intend to; but on the 8th of January, 1879, when you prepared that notice to the bank, did you not know that a deed had been made to Reynolds which was, in point of fact, for the benefit of Dr. Bissell?

A. Yes, sir; I did know that; I must have known it.

X Int. 17. You also knew at that time that the deed that had been made by Handley, Robertson, and Rawlings to Foss for their one-fourth interest, a portion of that was claimed by Dr. Bissell?

A. Certainly I did; he claimed one-twelfth interest in that conveyance.

X Int. 18. So that you knew that there had been two deeds made, one to Foss and the other to Reynolds?

A. I knew that.

X Int. 19. And you knew that the deed to Reynolds was made for the benefit of Dr. Bissell, and that Reynolds had no interest in it?

A. Certainly; I knew in this notice that a part of that money was claimed twice over.

X Int. 20. Well, knowing those facts, you as attorney for Dr. Bissell wrote a notice to the bank, and served it upon the bank?

A. Certainly I did; I did it at Dr. Bissell's request.

X Int. 21. When did you afterwards advise Bissell for Reynolds, if at all, that he could not recover that three-twelfths in a suit with Foss and Hunter?

A. I could not tell you; I got a letter from Dr. Bissell containing a summons sent to him by Dr. Reynolds from Colorado Springs, in which he stated that he was anxious I should at once prepare Dr. Reynold's answer to a suit brought by Foss and Hunter up in Leadville.

X Int. 22. That was growing out of the second deed?

A. Yes, sir; then I began to investigate the matter; I telegraphed Dr. Reynolds to come up here; I think he came to my office the night I telegraphed, and then I found out about it after talking with Dr. Reynolds; then I think I wrote to Mr. Cavender, and he wrote me something about it—about the facts in the case in order to

prepare an answer, and from everything I could learn I thought it was a pretty weak case for Dr. Bissell as well as for Dr. Reynolds, and I told him so.

X Int. 23. Then three-twelfths of the amount of money which was obtained by Dr. Bissell out of the bank for Reynolds remained there from January, the time you served the notice, up to the latter part of May, did it not?

A. Yes, sir; I checked out some in April at your request;

222 the 26th day of April, I think.

X Int. 24. That was five-twelfths of the money?

A. Yes, sir.

X Int. 25. That went to Foss and Hunter and three-twelfths to Dr. Bissell?

A. Yes, sir.

X Int. 26. And those checks you made in April?

A. Yes, sir.

X Int. 27. Then four-twelfths, one-twelfth of which he claimed for himself, and three-twelfths of which he claimed for the other French gentleman, was remaining in the bank until the latter part of May?

A. Until he came out and you and he settled it up in Leadville; and I think he checked that out himself; I will state that neither Foss, Hunter, or anybody else ever requested me to join in a check on the bank until on or about the 24th day of April, at Golden City, when Col. Dyer asked me to check that money out, and I came down here to see the Colonel that night or the night following; I think the night following; and the next day, about 9 o'clock in the evening, I signed for Dr. Bissell, two checks, one in favor of Foss and Hunter, and the other in favor of Dr. Bissell, whereby some sixty thousand dollars was checked out of a fund containing ninety-one thousand dollars and something, and divided between them; but I cannot tell the sum received by each without figuring up.

X Int. 28. Well, that is not necessary. The amount you checked out by those two checks in April was the three-twelfths which was undisputed to Bissell, and the five-twelfths which was undisputed to Foss and Hunter?

A. Yes, sir.

223 X Int. 29. The four-twelfths remained in the bank?

A. Yes, sir.

X Int. 30. One-twelfth of which is still in dispute, and three-twelfths of which he claimed for Reynolds, and was checked out after he came to Leadville, the latter part of May?

A. Those are the facts exactly as I understand them.

X Int. 31. Do you remember a conversation had in the back rooms of the Miners' Exchange Bank at Leadville in June last, at which conversation there were present yourself, Mr. Hunter, Mr. Foss, Mr. Trimble, and Mr. Cavender, touching the deed that you say you sent to J. Y. Marshall on the second day of December?

A. I do; I cannot tell you what day in June it was, but it was after the filing of the bill in the Little Fittsburg case.

X Int. 32. Do you recollect of stating to them that complaint had

been made about your having spirited that deed away, or something to that effect?

A. Yes, sir.

X Int. 33. Do you remember saying to them in that conversation that you had never seen that deed from the day the case was tried up to the time this conversation occurred?

A. I don't think I stated that, because I never saw the deed at the time the case was being tried; we could not find it.

X Int. 34. Well, did you say to them in this conversation in June last that you had never seen the deed at all?

224 A. No, sir; I don't think I did, because that would not be the fact; I did see the deed, but they were accusing me of hiding the deed from them, which charge I denied most emphatically, because it was not the fact. I never tried to do anything with those men or towards those men that was not strictly professional or honorable in any way, shape, or manner.

X Int. 35. I want to call your attention to that. Do you remember whether you stated to them in that conversation in June, in the back part of the bank, that you had never seen the deed at all?

A. No, sir; I don't think I did state that, because I had seen the deed subsequently, but it was long after I had commenced my last suit for those gentlemen that I saw the deed.

X Int. 36. Up to the time that your memory was refreshed by the registered letter and the deed here in June last during the Little Pittsburg trial, had you any recollection of ever having seen the deed?

A. Yes, sir; but I did not have any recollection that I sent it by registered letter to Mr. Marshall; that refreshed my memory upon that point.

X Int. No. 37. Then, if your memory was refreshed by having that evidence brought out in the Little Pittsburg case, you might have said in the presence of Hunter, Foss, and Trimble that you had never seen the deed, might you not?

A. I might possibly have said so, because I went in there, and I admit I was very angry with those men, owing to certain charges they had made in that Little Pittsburg bill, and I went in

225 there to tell them what I thought of their action in the premises.

X Int. 38. Do you recollect whether or not you told them in that conversation that you had never seen the deed at all up to that time?

A. Well, I don't believe I did; but if they should say so, I don't know that I would really dispute it; but I don't believe I said any such thing; considerable was said there, and all of us were pretty hot.

(Signature waived.)

The above is all the testimony of witness, Louis C. Rockwell.

(Signed) JOHN W. WEBSTER, *Examiner.*

By agreement of counsel, the further taking of testimony in this

cause is hereby continued until Wednesday, September the 17th, A. D. 1879, at four o'clock p. m., at my office in Denver.

(Signed) JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Wednesday, the 17th day of September, A. D. 1879, at four o'clock p. m., the taking of testimony was resumed at my office, by agreement of counsel, and Dr. Charles R. Bissell, a witness heretofore sworn in this cause, was recalled by Mr. Rockwell, and testified in his own behalf as follows:

Direct examination by Mr. ROCKWELL:

Int. 1. Why did you not purchase the interest of Rawlings, Robertson, and Handley in that property directly for yourself?

Ans. I did purchase it, through Mr. Foss; at least I purchased an interest in it.

225½ Int. 2. Had you not had that conversation with Mr. Foss regarding the purchase of their interest, could you and would you have purchased it yourself?

A. I could have purchased it and would have purchased it all myself for the $15,000, if it had not been that I supposed that it was coming to the company.

Int. 3. State whether or not that conversation with Mr. Foss regarding the purchase of the property mislead you and caused you to lose your interest in it if Foss keeps it himself.

A. Certainly it did. I was virtually thrown off my guard by Mr. Foss' action, supposing that he was purchasing it for Foss, Bissell, and Hunter.

Cross-examination by Mr. DECKER:

X Int. 1. Doctor, how much ready money had you on hand for the purchase of that mine?

A. I have never seen the time for several years back that I could not raise that amount of money, or even more. I either had the money or collaterals.

X Int. 2. Did you have the money at that time?

A. I don't think I had the money in bank at that time, although I had a good bank account at that time, and could have gone right to the bank and raised the money.

X Int. 3. Your bank account at that time was kept at Leadville, was it not?

A. No, sir; only a portion of it.

X Int. 4. And the other portion where?

226 A. At Colorado Springs, at the First National Bank of Colorado Springs. I had valuable property sufficient to raise that amount, or even more, in twenty-four hours' time.

X Int. 5. What did your property consist of, real estate or personalty?

A. No, sir; in notes and an interest in a business which is carried on in Colorado Springs now.

Thereupon the witness, Charles R. Bissell, read over all the testi-

mony given by him in the cause, and stated that he desired to correct his answer made to cross-interrogatory number 126, at folio number 301, which interrogatory and the witness' reply thereto is as follows:

"Well, when you swore in your answer here that it was really paid out of money in the Winnemuck mine, you were swearing to what you believed, and not what you knew?

"A. I don't remember what I swore. I don't know just what the reading of that is now."

In correction of which testimony the witness said: I want to state that when I swore in that answer that the money paid for the interest of Rawlings, Robertson, and Handley was really paid out of the Winnemuck money, that it was paid out of money that had come from the Winnemuck mine, and I swore to that from the fact that the Peoples' Bank, at Colorado Springs, where this money was paid, and the Miners' Exchange Bank, at Leadville, were really one and the same thing, owned by McFarlane, Trimble, and Hunter; that is, they are officers, and McFarlane is at the head of it, and that at the time of their purchase there was an excess over the amount
227 paid of money belonging to the Winnemuck Company in the Miners' Exchange Bank, and that virtually, whether the identical money was used or not, it was paid out of the money belonging to the Winnemuck Company. I want to state that I did not comprehend the question which Judge Dyer put to me when I gave the answer which is reported, and did not know what it referred to until the testimony was read to me after it was written out.

Cross-examination by Mr. DECKER:

X Int. 1. After the payment of the $15,000 for the Missourians' interest in the Winnemuck mine, was there not the same amount of money then in the Miners' Exchange Bank to the credit of the company—that is, Foss, Hunter, and Bissell?

A. There was, so far as I know. I presume there was.

X Int. 2. The amount of money then than was to the credit of that company was not changed or effected by the purchase made of the Missourians' interest in the Winnemuck mine?

A. I think it was not.

X Int. 3. Did you, the company, Foss, Hunter, and Bissell, have more than one account with the Miners' Exchange Bank in connection with the Winnemuck mine?

A. I think not, sir. It was kept under different names, at different times, but I think there was only one account.

(Signature waived.)

The above is all the testimony of witness, Charles R. Bissell, upon his second examination.

(Signed) JOHN W. WEBSTER, *Examiner.*

228 Thereupon it was agreed and stipulated by the attorneys for the respective parties in this cause, hereinbefore set forth, that the examiner may write up the testimony of the witnesses herein

as though the same had been read over and subscribed by them respectively, the reading to and signatures of the witnesses being hereby expressly waived, the examiner to state the testimony of each witness over his signature, and certify the same to the court by his usual certificate, which said testimony so certified may be used and read in evidence in this cause, in the same manner and to the same effect as though the above formalities had been fully complied with under the rule.

(Signed) JOHN W. WEBSTER, *Examiner.*

By agreement of attorneys for the respective parties, the taking of further testimony in this cause is hereby continued until Monday, the 1st day of December, A. D. 1879, at the hour of two o'clock p. m., at my office in Denver.

(Signed) JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this first day of December, A. D. 1879, at the hour of two o'clock p. m., at my office in Denver, the taking of further testimony on the part of Charles R. Bissell, a defendant herein, was resumed.

And thereupon CHARLES CAVENDER, a witness of lawful age, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the mat-
229 ters in controversy between the parties aforesaid, deposed and testified as follows:

Direct examination by L. C. ROCKWELL, Esq.:

Int. 1. What is your name, occupation, age, and place of residence?

A. Charles Cavender; occupation, attorney-at-law; age, twenty-four; residence, Leadville.

Int. 2. Do you know Simon H. Foss, Absalom V. Hunter, Charles R. Bissell, and the First National Bank, the parties litigant; and, if so, how long have you known each of them?

A. I do. I have known the bank and Bissell for six years, and I have known Foss and Hunter for nearly two years.

Int. 3. Do you know of certain litigation existing between Tabor, Rische, and George F. Hook on the one side (or some of them), and Bissell, Foss, and Hunter, Edward Handley, George W. Robertson, and Amos Rawlings on the other?

A. I do.

Int. 4. State what properties were in litigation in that controversy.

A. The Winnemuck, New Discovery, and Little Pittsburg.

Int. 5. Do you know anything about L. C. Rockwell's drawing an answer in that litigation to a certain bill in equity for an injunction, filed by Tabor and Rische against Bissell, Foss, Hunter, Robertson, Rawlings, and Handley?

A. I do.

Int. 6. When was it?

A. I think it was last September, or the first part of October; I don't remember the date.

Int. 7. What year?

A. 1878.

Int. 8. Can you produce the original draft of that answer drawn by Rockwell?

A. I can.

230 Int. 9. Produce it.

A. It is on your table. (Witness produces the draft of the original answer in L. C. Rockwell's handwriting, which is offered in evidence and marked "Exhibit K.")

Int. 10. Whose handwriting is this paper in? (Witness shown the answer filed as the original answer in the case of Tabor and Rische, as complainants, against Bissell, Foss, Hunter, Handley, Robertson, and Rawlings, as defendants in the equity suit, a copy of which is Exhibit B in this case.)

A. It is in my handwriting.

Int. 11. From whom did you get the original draft, if that is a copy of any paper?

A. I got it from L. C. Rockwell.

Int. 12. Look at the signatures of the attorneys in the original answer and see in whose handwriting their names are signed.

A. James Y. Marshall's.

Int. 13. Look at the verification of that answer and see if you know the handwriting.

A. I know their handwriting; the signatures are by Charles R. Bissell and Simon H. Foss.

Int. 14. Do you know of that answer being read to those defendants, Bissell and Foss, previous to their signing and verifying the same? If yea, state where it was, who read the answer, and all the circumstances connected with the reading of the answer.

A. I am not positive as to whether that was read or not; my impression is that it was read in the bank; but whether I read
231 it or somebody else read it I am not certain. I am not positive about its being read, but my present impression is that it was read in the Miners' Exchange Bank at Leadville.

Int. 15. Do you know of the original draft, from which you copied this answer, having been read in the presence of Simon H. Foss, Charles R. Bissell, and George W. Trimble; and, if yea, state where it was and the circumstances connected with the reading of it, and who else, if any one, was present, aside from the parties just named?

A. The original draft from which this answer was copied was read in my office in Leadville by L. C. Rockwell. There were present those you have already named, Rockwell, James Y. Marshall, and myself.

Int. 16. At the time that the original draft, as drawn by Rockwell, was — to Foss, Bissell, and Trimble in your office, in Leadville, was there any other paper read in connection with it? If you answer yea, state what it was and who read the other paper.

A. A copy of the complaint in the case was read. I read it.

Int. 17. State where you were at the time Rockwell read this original draft to Bissell, Foss, and Trimble?

A. I was sitting by Mr. Rockwell.

Int. 18. Do you remember of hearing the following language read by Rockwell to Foss, Bissell, and others from the original draft: "Who worked and mined said lode and premises, and took therefrom ore and mineralized rock, until on or about the first day of October, 1878, at which time said Rawlings, Handley, and Robertson sold and conveyed all their right, title, and interest in
232 and to said premises to said Simon H. Foss, who holds the title thereto for the use of said Bissell and Hunter and himself?"

A. Yes; I remember that being read—that is, I remember substantially that being read.

Int. 19. Who were the attorneys for Bissell, Foss, and Hunter in that suit?

A. James Y. Marshall and L. C. Rockwell were the main attorneys, and L. J. Laws and myself were employed at various times during the suit. I don't remember that there were any others.

Int. 20. State whether or not Rockwell consulted with you in the preparation of that original draft, or previous to their answer being drawn and signed by the defendants, regarding the merits of that case, or otherwise?

A. He did not. I don't think I ever knew him before that night.

Int. 21. State whether or not you gave any directions or made any suggestions as to how the answer should be drawn, or what should be embodied therein.

A. I did not.

Int. 22. Where were you at the time the answer was finally signed?

A. I think I was in Colorado Springs, judging from the date of the acknowledgment which is given there. Shortly after that answer was drawn I went to Colorado Springs, and was there two or three weeks.

Int. 23. Do you know anything about Bissell, Foss, and Hunter having money in the Exchange Bank, or any other bank in Leadville, which they owned or had an interest in as the money derived from the proceeds of the working of the Winnemuck mine?

A. I do.

233 Int. 24. Do you know anything about their taking any part or portion of that money to purchase the New Discovery lode, or an interest therein? If yea, state whether or not you know of objections being made by either Bissell, Foss, or Hunter regarding the use of that money for that purpose?

A. The only way in which I know of their taking any money from that fund was from conversations among them before the mine was purchased, when they were talking over how much money they had in bank, and whether they could purchase or not. The advice given them was to buy the whole mine, and they said they had not money enough. Bissell thought he could raise some money; Foss and Hunter, or Trimble acting for Hunter, thought they could raise some. It was then decided that Foss and Trimble were to go up

and look the property over and decide about buying it. They went up the next morning after the talk, and when they came back said that they did not think the New Discovery was worth $5,000.00; that there was not that much ore in sight, and that they would not buy it. Marshall insisted upon their buying the mine for the purpose of fighting this suit. Bissell sided with Marshall. As to where the money came from I don't know, except from the talk. I know, too, that Halleck put in $5,000.00.

Int. 25. Do you know of Bissell, Foss, and Hunter having given any bonds in certain attachment suits wherein Rische, Tabor, and Hook were attaching the ore which had been mined by them from the Winnemuck?

A. I do. That is the particular part of the business which
234 I was attending to at that time.

Int. 26. State whether or not you were employed by the parties to look after those bonds.

A. I was, for that particular purpose.

Int. 27. State, if you know, who were bondsmen in giving those attachment bonds—who were the securities?

A. Nelson Halleck, E. T. Rose, R. T. Taylor, George W. Trimble. I think those were about all.

Int. 28. At the time that Rockwell read this original draft to Bissell, Foss, Trimble, and others, in your office, state whether or not George W. Trimble was there and was in a position to hear the answer read by Rockwell.

A. He was. We were all in a room about nine by twelve.

Int. 29. State whether or not either Foss or Trimble ever made any objection to the language used in that answer at the time it was read by Rockwell, or at any other time when Rockwell was present or not, wherein the answer alleges that Mr. Foss held the title, which was conveyed to him by Handley, Robertson, and Rawlings for the use of himself, Bissell, and Hunter.

A. He never did, to my knowledge, except during the last four or five or six months. I think it is the last six months last past.

Cross-examination by Mr. DYER:

X Int. 1. Who of these defendants in the case of Tabor and Rische, plaintiffs, againt Bissell and others, defendants, employed you in the case, Mr. Cavender?

A. Bissell is the one who employed me, Trimble having spoken about it first.

235 X Int. 2. How long prior to the time when this answer was prepared had Bissell spoken to you about appearing for him?

A. I am afraid you did not understand my answer to the last question. I was employed by Bissell for the whole party. It must have been six or eight weeks before. It was when the first attachment suit was commenced by Tabor and others against these defendants.

X Int. 3. At the time that this answer was prepared by Mr. Rockwell and rewritten by you you understood from Bissell that there

was a controversy between himself and Foss as to an interest claimed by Bissell in the fourth of the Winnemuck and New Discovery lodes, purchased of Handley, Robertson, and Rawlings?

A. I understood that there was a trouble. The first day it arose Bissell told me of it. I think it was before that answer was prepared.

X Int. 4. Did he state to you his purpose in having that answer prepared as it was written?

A. He did not say anything about it at the time the answer was made. Some time afterwards, when the dispute was waxing pretty hot about this interest, he said that when Rockwell had asked him about how this interest was held, for the purpose of setting it up in the answer, he had told him (Rockwell) to allege that one-third of the interest was held for him by Foss, because he thought that if Mr. Foss did not object, it would make his title more secure.

X Int. 5. At what time did Mr. Bissell tell you that he
236 had informed Mr. Rockwell of such an interest, and directed him to prepare this answer in that way?

A. He did not tell me at what time it was. Mr. Rockwell was telegraphed for to come up from Denver and prepare the answer, and I suppose that it must have been then.

X Int. 6. Do you know of your own knowledge that Mr. Foss was advised that such a declaration would be put in the answer as the one that has been read to you here, before it was read to him that night?

A. No; I don't, if I understand your question.

X Int. 7. Did not you understand, Mr. Cavender, from your conversation, both with Mr. Bissell and with Mr. Rockwell, that that was put in the answer for the purpose, on the part of Dr. Bissell, of showing his interest in that particular property?

A. I supposed that it was from what Dr. Bissell said to me afterwards. Mr. Rockwell never told me anything about it.

X Int. 8. The original answer, in your handwriting, which has been shown to you, and a copy of which is marked Exhibit B in this case, you are not sure that it was read by you to Foss after it was written?

A. No, sir; I am not at all sure, but that was my impression, as I said before.

X Int. 9. The answer was rewritten by you, and left for the signature at the bank, was it not, or was it left with somebody else?

A. I think it was left with Mr. Marshall.

237 X Int. 10. Are you quite sure that you saw Foss at all, after you had rewritten the answer, before you left for Colorado Springs?

A. My impression is that I did. I don't remember what day the answer was written, but my impression is that I did see him. Certainly, if I staid there a day, I saw him repeatedly. He was in and out of my office twenty times a day.

X Int. 11. You would not say, then, certainly, that you read this answer over to him after it was rewritten?

A. It is still my best impression that I took it over to the bank and read it over to him.

X Int. 12. When Mr. Rockwell read the original draft of that answer, you were present, you say?

A. Yes, sir.

X Int. 13. Did you see the answer before it was read that night?

A. I did not.

X Int. 14. You would not pretend to recollect everything you might hear in a long answer of that kind, would you?

A. No, sir.

X Int. 15. What was it that so impressed that particular part in your mind that you can now recollect that it was read to Foss and Bissell?

A. I read the copy of the complaint, which was in my handwriting, and then commenced reading the answer, which was written hurriedly by Mr. Rockwell. I stumbled over it a good deal, and Mr. Rockwell said he would take it and read it over. As I was
238 going to copy it I stood by him and looked over his shoulder, catching more or less of it as he read along. I afterwards copied it.

X Int. 16. Now, from your recollection of what you read that night, would you be positive that the statement as now made, that the title was held by Foss for himself, Bissell, and Hunter, was read in that way instead of that the title was held by Foss for himself and company?

A. I am positive that it was not read company.

X Int. 17. At the time the answer was read over by Mr. Rockwell did you notice that Mr. Trimble and Foss withdrew for a time to consult with reference to the answer?

A. Yes; I noticed that they went out of the room together at that time.

X Int. 18. What occurred or passed between them at that time you do not know?

A. No; they went down on the street, I think, but I did not hear what was said.

X Int. 19. After they had gone down on the street and consulted about this matter, did they return to the room?

A. After they went out they came back; I don't know that they consulted about anything.

X Int. 20, How long were they absent before they returned?

A. Five or ten minutes—a short time.

X Int. 21. After the answer had been signed by Foss you had repeated conversation- with Dr. Bissell about the effect of that answer as to securing his right to a share in that interest in the Winnemuck lode?

A. Yes; we have spoken of it two or three times since then.

239 X Int. 22. He seemed to think through these various conversations with him that a very great point had been gained, did he not, by having Foss sign that answer?

A. He seemed to think that it made his interest more sure; yes, sir.

X Int. 23. After this answer was written when did you go to Colorado Springs from Leadville?

A. I went to Colorado Springs very shortly after, judging from the date of the acknowledgments. I was at Colorado Springs ten days or two weeks, and went from there to Lake City; I arrived there about the twenty-fifth or twenty-seventh of the same month—October, 1878.

X Int. 24. You say that Bissell told you that he had spoken to Rockwell about putting this declaration in the answer; where did he say he had spoken to him about that statement in the answer?

A. I don't think he said—I know though that on the day the answer was drawn Rockwell sent down from the hotel that he wanted some one to come up and give him the necessary information for the purpose of drawing this answer. Several of them were there, and said for Bissell to go up and see Rockwell. He went up, and I suppose it must have been there that he had the statement put in.

X Int. 25. Were you employed by Bissell at any time after this answer was written to go to Missouri?

Defendant Bissell's counsel objects to the introduction of any testimony regarding the witness' trip to Missouri, because irrelevant and immaterial; and renews his objection to each and every
240 of the subsequent questions and answers relating to said subject, because it is irrelevant and immaterial.

A. Yes, sir; I was employed to go there; I don't know whether you would call it by Bissell or Reynolds; Mr. Reynolds made all the arrangements with me.

X Int. 26. What were you employed to go to Missouri for?

A. To get a deed from Rawlings, Robertson, and Handley for their interest in the mine.

X Int. 27. What mine?

A. The Winnemuck and the New Discovery, too, I guess.

X Int. 28. Was that the same Handley, Robertson, and Rawlings who had previously conveyed their interest in this same property to Foss?

A. Yes.

X Int. 29. When you went to Missouri to get a deed from Handley, Robertson, and Rawlings, you knew that Handley, Robertson, and Rawlings had conveyed the same property to Foss?

A. I knew by their answer that they had; that is all.

X Int. 30. What conversation did you have with Dr. Bissell, the defendant in this case, touching the deed from the Missourians, that you went after?

A. That is a long story; I can tell you all the circumstances of that trip to Missouri.

X Int. 31. Well, that is what we want to hear; you may state the whole affair.

A. Dr. Bissell had talked a good many times with me about Foss' refusal to give him a deed for a third interest in the purchase from these Missourians—from Handley, Robertson, and Rawlings; said

that he was entitled to a third, but that Foss had taken
241 the title papers in his own name. I told him the only thing he could do about it was to commence suit for it. There were a good many conversations about the various ways of proceeding but nothing was done then. I think it was when he came back from Denver that he told me that there was no deed on record to Foss from those parties; and he wanted to know whether if he could get the deed from them on record before Farr did, he could force Farr to make him a deed for the interest which really belonged to him. I told him that I did not think he could, because it would not do for him to take the property in his own name, knowing that a deed had already been made; and he could not get a third party to act, because if he did, he would have to explain the whole thing, and the party would not be an innocent purchaser. He asked me if it might not induce Foss to make him a deed for his interest if he got control of this record deed. I told him that it would probably be worth nothing if there should be a suit brought, but that it might amount to something for the purpose of making Foss deed him his interest. He said he thought he would try it. I think he said that he had seen Reynold or written him about the whole transaction, and that he would probably take the deed. He told me then that he wanted me to go to Denver and see Reynold, and go on from there to Missouri and get the deed, if I could. I don't remember whether I drew the deed or had it drawn. I think I had it drawn so that it would not be in my handwriting. I did not care to have
242 my name known in it. I came down and saw Reynolds. Reynolds gave me a note to these three Missourians, and some money. I think Bissell gave me a hundred dollars before I left Leadville, and Reynolds gave me five hundred more. Both gave me some money; I dont remember the exact amounts. I went to Missouri and saw Rawlings first of them. I gave him the letter; he read it, and agreed to sign the deed. I got a carriage and we drove around to the other two parties' houses. They were four or five miles away. I saw them both. Rawlings talked with them awhile, and they said they would give the deed. We went back then to the town—I forget its name—somewhere, to acknowledge the deed.

X Int. 32. Was it not Warrensburg?

A. I think that was the place. They went in to acknowledge the deed, and after they had executed it, they said something to me about perhaps they ought not to give the deed, because they had already given one. I said they had better go and see their attorney; that I did not know anything about that. This was after they had signed the deed. They talked with their attorney, and the attorney spoke to me about it.

X Int. 33. Who was the attorney; was it a Mr. Sparks?

A. I don't remember; I would not know him again if I should see him. He said that it was all right to sign the deed; that it could not harm them any. They signed it. I came back to Colorado Springs and gave the deed to Reynolds.

243 X Int. 34. Was the letter that you carried from Reynolds to Rawlings an open letter?

A. Yes, sir.

X Int. 35. Do you remember that he stated in that letter that they would not lay themselves criminally liable to execute a second deed?

A. I don't think he did. I have the letter at Leadville. I brought it back with me.

X Int. 36. How much did you pay them for making this second deed?

A. I paid them a hundred dollars a piece.

X Int. 37. Did you telegraph Reynolds from Warrensburg or Kansas City that you had procured the deed?

A. I think not.

X Int. 38. Did you telegraph to Bissell?

A. No, sir.

X Int. 39. Where was Bissell when you returned to Colorado Springs with the deed?

A. At Leadville.

X Int. 40. What day of the month was it that you got back to Colorado Springs?

A. Sometime toward the end of November, I think.

X Int. 41. What day did you return to Leadville from Colorado Springs?

A. I staid there a couple of days, and then went straight to Leadville.

X Int. 42. When did you first see the original deed that had been executed to Foss by Robertson, Rawlings, and Handley?

A. The first time I saw it to know what it was was when I got it out of the post office at Leadville. I don't think I ever saw it before.

X Int. 43. What day of the month was it that you received it at Leadville?

A. It was sometime in the early part of December; it was
244 within a week or ten days after I got back from Missouri.

X Int. 44. From whom did you receive it?

A. I don't know. It was addressed to James Y. Marshall; I took it from the office. I receipted for it, if it was registered, and took it over to Mr. Marshall. He opened it, said it was the deed to Foss from the Missourians. I took it over that same evening and gave it to Mr. Trimble, by Mr. Marshall's directions.

X Int. 45. At that time the deed you had received from Handley, Robertson, and Rawlings in Missouri was recorded, was it not?

A. I don't know.

X Int. 46. When you delivered the deed to Reynolds at Colorado Springs, what directions did you give him about having that deed recorded?

A. I don't think I gave him any; I suppose he did have it recorded; I have never seen the deed since.

X Int. 47. It was your object, and the object of Dr. Bissell, was it not, to get a deed from Handley, Robertson, and Rawlings, and have

it placed of record in the county where the property was situated before the deed to Foss was recorded?

A. Certainly, if it could be done.

X Int. 48. The object that Dr. Bissell expressed to you was to get a second deed from the Missourians and file it of record before the deed to Foss could be got back to Leadville and filed in the recorder's office?

A. I suppose it was his object.

245 X Int. 49. He stated that he know that Handley, Robertson, and Rawlings had conveyed to Foss?

A. I suppose he did. It was generally talked of at the time that they had. I don't know that Bissell especially told me, but I knew it from the talk.

X Int. 50. Then the object of the second deed was to get it first of record?

A. I suppose so; I had that impression, but I don't know that Bissell told me that that was the object; of course that was the object that we talked over before I went to Missouri.

X Int. 51. Where did Bissell tell you that the deed was that had been given to Foss when you started for Missouri?

A. He did not tell me.

X Int. 52. What were his exact words, as you now recall them, touching that other deed?

A. I don't remember, except that he told me it was not recorded, and that it was in Denver. I think he said it was in Denver. I know he said it was not recorded.

X Int. 53. If it had been recorded you would not have gone to Missouri?

A. I think not.

X Int. 54. When you opened the letter containing the deed to Foss was there anything else in the envelope?

A. I did not open it.

X Int. 55. Did you see Mr. Marshall open it?

A. I think it probable that I did, but I don't remember.

X Int. 56. Was there any letter in there from Mr. Rockwell?

A. I don't know.

X Int. 57. Do you know from whom that deed came?

A. Not unless it was on the receipt which I signed at the 246 post office, as I guess it was.

X Int. 58. Do you now recall that you knew it was from Mr. Rockwell?

A. No; I don't recall knowing it at that time.

X Int. 59. You did not see any letter?

A. I did not notice any; I don't know whether there was a letter or not.

X Int. 60. Was Bissell in Leadville at that time?

A. I think he was, but I have no way of placing it.

X Int. 61. Did you notify him of your success in getting this deed when you returned to Leadville?

A. I think so.

X Int. 62. Did you tell him you had left the deed with Reynolds?

A. Yes, sir; I know I told him, because I paid him back the difference between my expenses and the money which I received, so that it must have been then.

X Int. 63. Then the deed was made to Reynolds because you had advised Bissell that it would not do him any good to have it made direct to him?

A. Yes; and because Reynolds knew all the facts in the case, and understood why it was done.

X Int. 64. Did you explain it to him?

A. No; Bissell said he had told him

X Int. 65. You understood at the time that it was Bissell's transaction, and that Reynolds had nothing to do with it so far as any real interest was concerned?

A. Yes.

X Int. 66. What did you say when Handley, Robertson, and
247 Rawlings asked you whether or not they would not subject themselves to criminal proceedings for making a deed to property which they had already sold?

A. They asked me, and I told them I would not have anything to do with it; to ask their attorney.

X Int. 67. Do you remember telling Handley they would involve themselves in no trouble if they would remain out of Colorado?

A. I don't think I did; I don't think we had any conversation about it. Handley I saw at his house, and we went to the lawyer's office, and the question was there asked me as to whether he would subject himself to criminal liability, and I told them to ask their attorney there, which they did; I don't remember the attorney's name. They said he was their attorney, and paid him two dollars for his advice.

X Int. 68. Were you present in Leadville at a certain conversation between Mr. Rockwell, Trimble, and Foss touching the whereabouts of that old deed while you were absent in Missouri?

A. I think that question came up. I was present at a conversation in the bank when that question came up.

X Int. 69. What did Rockwell say to them about the deed?

A. I think he said he did not know anything about the deed, and had nothing to do with it—something to that effect.

X Int. 70. At what time was this conversation?

A. I don't know; it was three, four, five, or six months ago.

248 X Int. 71. Were Trimble and Foss not complaining that Rockwell had retained the deed until this other deed was on record; and did he not, in answer to such complaint, state that he had not had the deed, and did not know anything about it?

A. It was in answer to some complaint of that sort. I don't remember his words.

X Int. 72. Was the inquiry as to where the deed was between the date of its execution and the second of December, at which time you delivered the deed?

A. Yes, sir; there was something said about it.

X Int. 73. You said you did not have it.

A. I don't think they asked me.

X Int. 74. You are quite sure that Rockwell said he did not have it?

A. My impression is that he said he did not have it.

X Int. 75. At the time of this conversation, five or six months ago, did you know at that time that the deed had been sent to Mr. Marshall, at Leadville?

A. I knew simply from what Trible told me.

X Int. 76. Did Mr. Rockwell ever tell you that he had sent the deed to Mr. Marshall in a registered letter?

A. No, sir; he never said anything about it.

X Int. 77. Trimble complained that Mr. Rockwell had retained the deed until you obtained the one from Missouri to Dr. Reynolds, and had it of record, did he not?

A. That was the complaint; I don't remember that Trimble was there. It was made by one of the three parties.

249 X Int. 78. That was the complaint made by these parties of Mr. Rockwell?

A. It was made indirectly.

X Int. 79. What was his reply?

A. The idea was that he had not had anything to do with it; I don't remember his words.

X Int. 80. Did not Dr. Bissell tell you before you left for Missouri that the deed to Foss from Handley, Robertson, and Rawlings had not been recorded, and would not be recorded until you returned?

A. No; he said that it had not been recorded, and he instructed me to get this deed from Missouri as quick as I could do so.

X Int. 81. He stated to you that the deed was in Denver?

A. I think he did.

X Int. 82 Did not he tell you that he had it?

A. No; the deed had been lost for a long while, and it was travelling about the country. My impression is that he said it was in Denver. I think it was here.

X Int. 83. Anyhow, you received the deed from Denver in a letter to Mr. Marshall, soon after you returned from Missouri?

A. Yes.

X Int. 84. And it was not received by Mr. Marshall until after you had informed Mr. Reynolds of you success in Missouri, and after you had informed Dr. Bissell that such a deed had been made?

A. No, sir.

X Int. 85. In the original suit, the answer to which is in your handwriting, and marked as an exhibit in this case, you were employed and paid by all the defendants in that suit, were you not, Mr. Cavender?

A. If I was in the original suit, I was.

250 X Int. 85. Mr. Rockwell was your associate attorney for Bissell, Foss and Hunter, was he not?

A. I was in the suit in this way: Before the trouble arose between the two mines I had been attorney in the case, that is, attorney for all the parties, personally. Then when the controversy came up on this suit, about things leading to this suit, I think there was an adverse filed of the Winnemuck against the Little Pittsburg. I

had nothing to do with it; they had been asking me questions and getting what information they wanted all along, but when the case came up they did not consult me about it, but employed James Y. Marshall and Mr. Post, of Georgetown, to draw up the first papers in the real suit between the parties (which was, I think, an adverse) and did not consult me at all about it; I did not like it very well, but I did not say anything about it, except to an outside party, who said something to Trimble, and he came to me and made an explanation about the matter; he said that Bissell had employed too many attorneys, more than they could afford to pay, and that if it had not been for that they would have got me in. I said that was all right, except that I thought it was a little queer. Well, he said, there would be a good many little things to be done, and he would get me to attend to them. I think that my name is signed to that answer as an attorney in the case, but that is all I know about it. I had nothing to do with getting the answer up, except making the copy; I was employed in the attachment suits, and went to
251 Lake City for them, and they paid me my bill; Trimble paid me for the whole crowd.

X Int. 87. The money that was used to pay for the interest which is now in dispute between Foss and Bissell, you don't know anything about how that was paid, do you?

A. I do not.

X Int. 88. You don't know that any of the money to the credit of the Winnemuck was used to pay for this interest, do you?

A. I don't know about it.

X Int. 89. Then the money you have spoken of as having been used to pay for the New Discovery mine was the money that belonged to Bissell, Foss, and Hunter, that was the money used for the purpose?

A. It was the Winnemuck money that was used jointly and for the interest of all in purchasing the New Discovery.

X Int. 90. The money used for that purpose has no reference to the money used to buy Handley, Robertson, and Rawlings' interest by Foss?

A. I don't know anything about that money.

X Int. 91. You don't know that the money for the property now in dispute was paid by Mr. Hunter, of Colorado Springs, do you?

A. No, sir; I don't know anything about that transaction.

X Int. 92. At none of these conversations, either about the answer that has been read to you here or the answer which you copied, was Mr. Hunter present, was he?

A. No, sir; I don't think he was; I think he was at Colorado Springs at that time.

252 Witness re-examined by Mr. ROCKWELL:

Int. 30. Do you wish to be understood as saying that Mr. Bissell ever stated to you that he got me to put anything in that answer for the purpose of overreaching Mr. Foss or Mr. Hunter, or to get them to sign anything whereby their rights would be jeopardized and taken from them, and that I consented to do anything like that,

or that I did do anything of the kind in the preparation of the answer?

A. Not at all; but just as I have explained; that Bissell was the one who gave Mr. Rockwell the information for drawing the answer. He was requested to go to the hotel and meet Mr. Rockwell by the other parties, and be represented therein, and afterwards he told me that in drawing the answer he had told Mr. Rockwell to set up the interest in this way, and that he (Bissell) thought that he owned a third, and thought that if Foss swore to it it would make his case stronger.

Int. 31. In the preparation of the answer, or in reading the answer over to Bissell, Foss, and Trimble, was there anything said in your hearing by anybody that there was any dispute between Foss and Bissell and Hunter regarding this one-twelfth interest?

A. No; there was not at that time; I don't know that there was any real fight at that time between the parties; Foss had the title, and did not convey; but I don't think they had come down to a real fixed fact that he would not convey; they were talking about
253 it; I remember Bissell's talking with Trimble to get him to ask Foss to convey, thinking Trimble would be able to influence him; I remember Trimble's stating that if the statements made by Bissell were right he ought to convey; I don't remember that at this time when the answer was drawn; it had come down to a real out-and-out fight between them as to the interest.

Recross-examination by Mr. DYER:

X Int. 93. Was there anything said at all at the time the answer was read about the respective interests of either of these parties in this property?

A. Nothing outside of what was in the answer; I don't think that there was anything said there, except that when they told me to copy the answer they finally said that I was all right to go on and copy it.

(Signature waived.)

The above is all the testimony of witness, Charles Cavender.

(Signed) JOHN W. WEBSTER, *Examiner.*

At this day, no further witnesses being in attendance or produced on behalf of either of the parties to this cause, by consent of attorneys the further taking of testimony in this cause is hereby continued until the 4th day of May, A. D. 1880, at 4 o'clock p. m.

(Signed) JOHN W. WEBSTER, *Examiner.*

On this 4th day of May, A. D. 1880, at 4 o'clock p. m., pursuant to the foregoing continuance and agreement, the parties, by
254 their respective attorneys, met at my office, and proceeded to take further testimony on the part of Dr. Bissell, and NELSON HALLECK, a witness of lawful age, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing

but the truth in relation to the matters in controversy between the parties aforesaid, deposed and testified as follows:

It is agreed by W. S. Decker, attorney for the defendants, Trimble, Foss, and Hunter, that the testimony of the witness, Nelson Halleck, may be taken by the examiner without the service of the usual notice, notice being waived, but all other rights of said defendants in the premises expressly reserved.

Int. 1. What is your name, age, and place of residence?

A. Nelson Halleck; my place of residence is here; that is, my family is here at present, but I am in Leadville most of the time.

Int. 2. Do you know Simon H. Foss, Absalom V. Hunter, George W. Trimble, Charles R. Bissell, Edward Handley, Amos Rawlings, and George R. Robertson, or any or either of them; if yea, how long have you known them. State also as to H. A. W. Tabor, August Rische, and Hook.

A. I know all but Handley, Robertson, and Rawlings. The rest of them I know. I know them all very well. I have known Mr. Foss and Mr. Trimble since the summer of 1878, and all of them except those three I have been acquainted with for from three to ten years. Rische and Tabor and those parties, I have known for a long time—ten or twelve years.

255 Int. 3. Do you know of some trouble between Tabor, Rische, and Hook upon the one side, and Foss, Hunter, Bissell, Rawlings, Robertson, and Handley upon the other side, regarding the right to the ore taken out of the Winnemuck lode in the summer or fall of 1878 by the last-named parties?

A. Yes, sir; I do.

Int. 4. State whether or not you are the Halleck who signed an attachment bond or forthcoming bond for Bissell, Foss, Hunter, Robertson, Rawlings, and Handley, or some of them, for the purpose of releasing the ore which Tabor, Rische, and Hook had attached under the claim that it was the ore belonging to the Pittsburg lode, as owned by them, as against the right of the first-named parties to the ore, as taken out of the Winnemuck.

A. Yes, sir; I am the Halleck.

Int. 5. State the time as near as you can when those bonds were signed.

A. It was the last of September or first part of October. I can't tell the exact date. That was about the time.

Int. 6. State whether or not you were in any way or manner secured or indemnified for the signing of the bond; if you answer yea, state in what way or manner.

A. I was secured by going to James & Eddy and drawing a check for the amount of money that I signed the bond for. The ore was attached, as you all know, and by giving bonds for the amount of money that the ore was assumed to be worth, about a hun-

256 dred tons of ore was attached, and it was valued at so much money. I went down with Foss, Trimble, and that concern, and I signed a forthcoming bond for that amount of money, and it

was satisfactory to the parties receiving the bond. I got a check from James & Eddy for the amount I went security for.

Int. 7. Name the amount you went security for.

A. It was about twelve thousand dollars; it might have been a few dollars over that sum, but that was about the amount. We estimated at that time that the ore was worth about twelve thousand dollars.

Int. 8. State whose check it was.

A. It was James & Eddy's check.

Int. 9. Given for what ore?

A. Given for the ore taken from the Winnemuck mine by Foss, Bissell, Hunter, and the Missouri boys.

Int. 10. How long did you hold that check?

A. I can't tell exactly. It laid in my safe for some time. I held it until the trouble was settled in some way.

Int. 11. What did you finally do with the check?

A. I think the check was turned over to Foss, Trimble, and the Missouri boys—that company. I think that the check was turned over to them while I was in Denver. I was here, and my clerk was instructed to turn the check over.

Int. 12. State what your information was as to whether or not the trouble and matters in dispute between Tabor, Rische, and Hook on the one side, and Foss, Bissell, and Hunter on the other side, was or was not settled at the time you surrendered this check.

A. I think it was.

257 Int. 13. State the tenure and conditions upon which you held this check.

A. If the suit went against Foss, Bissell and Company, why I had the money there to release myself in the matter. I could pay it right over. I was holden for that amount of money which the ore was valued at. I signed a bond, and was responsible; and I held this check as security for the bond which I signed.

Int. 14. State whether or not there was any agreement between yourself, Bissell, Foss, and Hunter, or any of them, that no money should be used which came from the ore mined from the Winnemuck lode by them until the suit between themselves and Tabor, Rische, and Hook was settled—outside of this check which you have spoken of.

A. I don't know anything about that at all. I knew nothing about their affairs, only just what I went security for; and the check was placed in my hands as security for that money.

(Signature waived.)

The above is the testimony of witness, Nelson Halleck.

(Signed) JOHN W. WEBSTER, *Examiner.*

Counsel for Dr. Bissell then introduced in evidence deeds marked respectively Exhibits L & M, and which are hereto annexed and made a part of this testimony.

The parties, by their counsel, not desiring to produce other wit-

nesses or testimony, the taking of testimony in this cause is hereby closed this 4th day of May, A. D. 1880.

(Signed) JOHN W. WEBSTER, *Examiner.*

258 EXHIBIT "A."—(Signed) JOHN W. WEBSTER, *Examiner.*

This indenture, made the second day of October, in the year of our Lord one thousand eight hundred and seventy-eight, between Simon H. Foss, of the county of Lake and State of Colorado, party of the first part, and Absalom V. Hunter, of the county of El Paso and State of Colorado, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of thirty thousand dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, and forever quit-claimed, and by these presents does grant, bargain, sell, remise, release, and forever quit-claim, unto the said party of the second part, and to him, his heirs and assigns, an undivided five-twelfths ($\frac{5}{12}$) interest in and to the Winnemuck lode, ledge, or deposit, situate in California Mining District, Lake county, Colorado, described as follows, to wit: Beginning at cor. No. 1, a pine post 4x4x5 feet long, marked S. W. cor. No. 1, Winnemuck lode, whence discovery shaft bears N. 56° 25 E. 165 feet dist., thence N. 15° 30′ E. 540.5 feet to cor. No. 2, a pine post $3\frac{1}{2}$x$3\frac{1}{2}$x3 feet long, marked N. W. cor. No. 2, Winnemuck lode, and N. E. cor. No. 3, Dives lode, whence Homesteak Peak bears N. 44° 20′ W.; and a point on Mt. Massive bears S. 68° 48′ W.; thence from cor. No. 2 N. 86° 5′ E. 300 ft. to cor. No. 3, a pine post 4x4x5 ft. long, marked N. E. cor. No. 3 of Winnemuck lode; thence *thence* S. 15° 30′ W. 540.5 ft. to cor. No. 4, a pine post 4x4x4 ft. long, marked *marked* S. E. cor. No. 4 Winnemuck lode; thence S. 86° 5′ W. 300 ft. to cor. No. 1, the place of beginning, the variations of the magnetic needle on all courses being 15° E.

Also, an undivided ($\frac{35}{1292}$) thirty-five one hundred and ninety-seconds of the north (1,238) twelve hundred and thirty-eight feet of the New Discovery lode, situate in California Mining District, Lake county, Colo., and more particularly described in official survey No. —, on file in the land office in Fairplay, Park county, Colo., together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver-bearing quartz, rock, and earth therein, and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the said premises, and every part and parcel thereof, with the appurtenances.

To have and to hold, all and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

(Signed) SIMON H. FOSS. [SEAL.]

Signed, sealed, and delivered in presence of—

(Signed) GEO. W. TRIMBLE.

259 STATE OF COLORADO, } ss:
County of Lake, }

I, Wm. L. Brosius, a notary public in and for said county, in the State aforesaid, do hereby certify that Simon H. Foss, personally known to me to be the person whose name is subscribed to the annexed deed, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal, this eighteenth day of December, A. D. 1878.

[SEAL.] (Signed) WM. L. BROSIUS,
Notary Public.

[Endorsed:] Exhibit A. No. —. Mining deed. S. H. Foss to A. V. Hunter.

STATE OF COLORADO, } ss:
County of Lake, }

I hereby certify that this deed was filed for record at 11 o'clock a. m., Dec. 30th, 1878, in my office, and duly recorded in book H, page No. 133.

JOS. H. WELLS, *Recorder.*

Fees, $2. Paid.

260 EXHIBIT B.—(Signed) JOHN W. WEBSTER, *Examiner.*

Injunction, Answer, and Cross-Complaint.

STATE OF COLORADO, } ss:
County of Lake, }

In the District Court of the Fourth Judicial District in and for the county of Lake, in vacation. Before the August Term, A. D. 1879.

HORACE A. W. TABOR and AUGUST RISCHE, Plaintiffs,

vs.

CHARLES R. BISSELL, SIMON H. FOSS, ABSALOM V. HUNTER, impleaded with EDWARD HANDLEY, AMOS B. RAWLINGS, and GEORGE W. ROBERTSON, Defendants.

The joint and several answer of Charles R. Bissell, Simon H. Foss, and Absalom V. Hunter, impleaded with Edward Handley, Amos B. Rawlings, and George W. Robertson, who for the first ground of defence to the complaint say:

1. They and each of them deny that plaintiffs, or either of them,

are the legal owners of or are rightfully in the possession of, or have the legal right to hold, occupy, or possess the Little Pittsburg lode, vein, mine, or deposit of silver-bearing ore, or any part or portion thereof, as described in said complaint.

2. For a second defence to the complaint these defendants, and each of them, deny that on the 20th day of April, A. D. 1878, or at any time prior thereto, subsequent to the 29th day of March, A. D. 1878, the ground, lode, and premises called by plaintiffs the Little Pittsburg lode was or had been wholly unoccupied, or that plaintiffs and George F. Hook, or either of them, had the legal right, or any right at all, to enter upon or occupy the said lode they call the Little Pittsburg lode, or so much of the same as is subsequently called and described as the Winnemuck or New Discovery lodes or deposits.

261 3. For a third defence to the complaint these defendants, and each of them, say whether or not, on the first day of May, A. D. 1878, or at any other time, the plaintiffs and said Hook, or either of them, marked said so-called Little Pittsburg lode, or caused the same to be surveyed or recorded at the times and in the manner described and alleged in the said complaint, these defendants have not and cannot obtain sufficient knowledge or information upon which to base a belief.

4. That these defendants, and each of them, deny that the original location certificate did not, or the second and third amended ones did not, conflict and interfere with the existing rights of other persons, viz., with those of these defendants.

5. These defendants, and each of them, deny that the shaft called the Discovery shaft in the plaintiff's complaint was or is at or upon the apex, summit, or outcrop of the lode or body of mineral plaintiff's call the Little Pittsburg.

6. That whether said George F. Hook has sold and conveyed his supposed interest in and to the so-called Little Pittsburg lode to the plaintiff's these defendants have not nor cannot obtain sufficient knowledge or information on which to base a belief, but these defendants deny that the plaintiffs are the owners of or entitled to the possession of the so-called Little Pittsburg lode; that they deny that plaintiffs and said Hook, or either of them, struck the lode, vein, or deposit subsequently called the Little Pittsburg lode at the depth of twenty-six (26) feet, and deny that they struck the same on or before the 1st day of May, A. D. 1878.

7. For a further defence to said complaint these defendants,
262 and each of them deny that they or either of them ever at any time entered upon the Little Pittsburg lode, or any part or portion thereof. They deny that they, or either of them, ever entered into any old or abandoned shaft about 400 feet northeasterly from the workings of plaintiffs on the said Little Pittsburg lode, or at any other point on said claim or premises called by plaintiffs the Little Pittsburg lode.

8. These defendants deny that they, or either of them, on or about the last day of June, 1878, or at any other time, surveyed, located,

or recorded any part or portion of the so-called Little Pittsburg lode, and called it the "Winnemuck" or "Winnemucca" lode.

9. These defendants deny that at the time they proceeded to survey, locate, and record the said Winnemuck lode, as hereinafter stated, they had neither struck, found, nor discovered any lode, vein, or deposit of mineral whatever.

10. That these defendants, and each of them, deny that they on or about the 15th day of August, A. D. 1878, or at any other time, at the depth of 180 feet from the surface, or at any other depth, struck or cut the vein or lode of plaintiffs, or that they have at any time taken, mined, or got out any ore of plaintiffs from any lode or vein whatever.

11. That these defendants, and each of them, deny that they or either of them are not able to respond in damages for all sums of money and pay any judgment at law which plaintiffs can or will ever recover against them for any or all real or imaginary injury they or either of them will sustain by reason of the acts and
263 doings of these defendants in working on the lode, vein, and premises they call the Winnemuck, and they deny that the plaintiffs are remediless at law, but on the contrary they aver that they have a full, ample, and complete remedy at law, by way of an action for the possession of said premises, if they are entitled to any relief.

12. That these defendants, and each of them, deny that the plaintiffs ever served any written notice on them requesting them to stop or cease work on said Winnemuck lode, or any part or portion thereof.

13. These defendants, and each of them, for a further defence to said action, allege on information and belief, and charge the fact to be, that on or about the 28th day of March, A. D. 1878, William H. Van Boxall and George Davidson went upon vacant and unoccupied lands and public domain of the United States, and began to explore, search, and prospect for mineral-bearing veins, lodes, and deposits, and on or about the 12th day of April, A. D. 1878, they found and discovered a lode, vein, or deposit of mineral bearing rock, which had not theretofore been discovered or previously known to exist, which they then called, named, and designated as the Winnemuck lode; that said Van Boxall and Davidson at that time, or just previously thereto, marked said lode, vein, and deposit of mineral which they had then just discovered by placing at the point of discovery a plain sign or notice containing the name of the lode, which was the Winnemuck lode, the date of discovery, the names of the discoverers, which were William H. Van Boxall and George
264 Davidson, and the number of fact claimed on each side of the discovery shaft on said lode, and the general course of the same, and the number of feet claimed on each side of the crevice on said lode. Also by marking each of the courses of the surface-ground of said Winnemuck lode by a plain sign or notice, stating on the respective posts the particular position it occupied toward said Winnemuck lode, and defendants aver that when the claim was so marked the boundaries thereof could be readily traced.

Defendants further allege that said Van Boxall and Davidson kept actual possession of said Winnemuck lode and premises from the time they first began to work on the same until on or about the 15th day of April, A. D. 1878, at which time they sold an undivided three-fourths ($\frac{3}{4}$) part of the said Winnemuck lode to Charles R. Bissell, Absalom V. Hunter, and Simon H. Foss, these defendants, who at once entered into the occupation and possession of said lode and premises, together with said Van Boxall and Davidson, and continued to work, mine, occupy, and possess the said Winnemuck lode continuously, and to work, mine, and sink upon the same with reasonable diligence from that time until the present; and the said defendants allege that they are, and each of them is, a citizen of the United States.

That on or about the 20th day of June, A. D. 1878, said Van Boxall, Bissell, Hunter, Davidson, and Foss caused said lode to be surveyed and a location certificate thereof made and signed and recorded in the office of the clerk and recorder of Lake
265 county, Colorado, on the 28th day of June, A. D. 1878. That previous to the recording of the said lode the surface boundaries of the claim were marked by six substantial posts set in the ground, as follows, to wit: A post set at each of the four corners of said lode and claim, and a post at the centre of each side line of said claim; each of the said posts was hewn on the side in towards the claim, and marked with writing and letters stating the position it occupied towards the said claim and lode. The discovery shaft of said lode was also marked with a plain sign and notice as first above set forth.

That a description of said lode, as taken from the location certificate, is as follows:

Know all men by these presents that we, the undersigned, did on the twentieth (20) day of June, 1878, claim by right of location five hundred and forty and $\frac{1}{2}$ feet, linear and horizontal measurement, in length, and $282\frac{3}{10}$ feet in width, on the Winnemuck lode, along the vein thereof, with all its dips, variations, and angles, as allowed by law, $453\frac{5}{10}$ feet of said lode so located lying and being N. 15° 30′ E. of the discovery shaft on said lode, and 87 feet being S. 15° 30′ W. of said shaft, the location and bounds of said claim being marked and described more particularly as follows, to wit: Beginning at corner No. 1, a pine post 4x4x5 feet long, marked S. W. cor. No. 1, Winnemucca lode, whence discovery shaft bears N. 56° 25 E. 165 feet dist.; thence N. 15° 30′ E. 540.5 feet to corner No. 2, a pine post $3\frac{1}{2}$x$3\frac{1}{2}$x3 ft. long, marked N. W. cor. No. 2, Winnemuck lode, and N. E. cor. 3 of Dives lode, whence Homestake Peak bears N.
266 44° 20′ W. and a point on Mt. Massive bears S. 68° 48′ W.; thence from corner No. 2 N. 86° 5′ E. 300 feet No. 3, a pine post 4x4x5 feet long, marked N. E. cor. No. 3 of Winnemuck lode; thence S. 15° 30′ W. 540.5 feet to corner No. 4, a pine post 4x4x4 ft. long, marked S. E. corner No. 4, Winnemuck lode; thence S. 86° 5′ W. 300 feet to corner No. 1, the place of beginning.

That by virtue of the discovery and location of said Winnemuck

lode said defendants with said Van Boxall and Davidson became and were the owner- of said lode, together with all other lodes, veins, ledges, and deposits throughout their entire depth, the top or apex of which lie inside the surface boundaries of said Winnemuck lode and claim.

That on the 15th day of April, A. D. 1878, the discovery shaft of said Winnemuck lode had been sunk to the depth of at least 12 feet, and mineral-bearing rock, ore, and dirt, which assayed four ounces in silver per ton, had been found and discovered therein.

And at the time of the location of said lode and of the signing and recording of the location certificate as aforesaid said shaft was at least 130 feet deep, and there had been discovered therein a vein, lode, ledge, or deposit of mineral, rock in place, crevice material and ore dirt, which assayed sixty-six ounces of silver per ton, and that the same was clearly and well defined in said shaft.

That afterwards, and on or about the 27th day of July, A. D. 1878, said William H. Van Boxall and George Davidson sold and conveyed by a good and sufficient deed of conveyance all their
267 right, title, and interest in and to said Winnemuck lode and premises to Edward H. Handley, Amos B. Rawlings, and George W. Robertson, and delivered the possession of their interest in said lode and premises to them, who at once entered into the occupation and possession of said lode and premises with said Bissell, Foss, and Hunter, who worked and mined said lode and premises, and took therefrom ore and mineralized rock and dirt, until on or about the 1st day of October, A. D. 1878, at which time said Rawlings, Handley, and Robertson sold and conveyed all their right, title, and interest in and to said premises to said Simon H. Foss, who holds the title thereto for the use of said Bissell, Hunter, and himself. And said Rawlings, Handley, and Robertson at the time of making said deed delivered to these defendants all their possession and interest therein, and these defendants are now occupying and possessing the same.

14. That these defendants and their grantors have expended in developing said Winnemuck lode at least six thousand dollars; that they and their grantors have been in the actual and continuous possession and occupation of said lode from about the 29th day of March, A. D. 1878, until this time.

15. That on or about the 30th day of April last, and at other times as mentioned in said complaint, the said plaintiffs and one George F. Hook extended a survey and surveys of premises which they call the Little Pittsburg lode, over the ground and premises which these defendants and their grantors had been in the actual, open, and notorious occupation and possession of, under
268 the name of the Winnemuck claim, ever since the last of March, A. D. 1878, as is represented by the accompanying map hereto annexed and marked Exhibit A, and made a part of this answer; that these defendants and their grantors were the first on the ground, and were the first to strike crevice material, mineralized rock, dirt, and ore, and have by virtue of the first appropriation of the ground in dispute the better and paramount right to the same,

and the ore and pay material now being mined and taken from the lode, ground, and premises now in dispute.

16. These defendants, by way of an answer in the nature of a cross-complaint, upon their information and belief, aver and charge that in the month of March, 1878, and on or about the 4th day of March, A. D. 1878, George H. Fryer and Josiah A. Eads went upon the public domain of the United States to explore and prospect for mineral-bearing lodes, veins, and deposits; that on or about the last-named date they found and discovered a lode which had not previously been known to exist, which lode they named, called, and designated the New Discovery lode; that said lode is a silver-bearing one, and is described as follows, to wit:

Beginning at corner No. 1, a pine post set in the ground, whence United States locating monument No. 1 bears S. 65° 20′ W. 5,683.57 feet; thence from corner No. 1 E. 300 feet to corner No. 2, a pine post; thence N. 10° W. 1,500 feet to corner No. 3, a pine post; thence W. 300 feet to corner No. 4, a pine post; thence S. 10° E. 1,500 feet to corner No. 1, the place of beginning, making a piece of ground fifteen hundred feet in length by three hundred feet in width,
269 situate in California Mining District, Lake county, Colorado.

That on the 3d day of May, A. D. 1878, said Josiah A. Eads sold and conveyed all his right, title, and interest in and to the said New Discovery lode and premises to William Borden; that afterwards, and on the 18th day of May, A. D. 1878, said George H. Fryer and said William Borden made application to enter, purchase, and pay for said New Discovery lode and surface-ground connected therewith, and receive a patent therefor, from the Government of the United States; that such application was made in the United States land office at Fairplay, in the State of Colorado; that such proceedings were afterwards had in said matter; that on or about the 1st day of August, A. D. 1878, the said Fryer and Borden entered and paid for said lode and premises in said United States land office, and received the register's certificate of final entry and the receiver's receipt of payment for said claim, premises, and New Discovery lode; and that on the final entry and payment for said lode and premises in said land office said Fryer and Borden became and were the owners in fee of the same; that they so remained the owners thereof until on or about the 14th day of September, A. D. 1878, when said Borden sold and conveyed all his right, title, and interest in and to the north twelve hundred and thirty-eight (1,238) feet of said New Discovery lode and vein and premises to these defendants, but the deed for the same was made to Theodore Berdell and Nathaniel Witherell for the sole use and benefit of these defendants, and that the said Berdell and
270 Witherell have no real or beneficial interest therein. And on the 4th day of October, A. D. 1878, said Fryer sold and conveyed all his right, title, and interest in and to the north twelve hundred and thirty-eight (1,238) feet of said New Discovery lode, vein, and premises to these defendants, who now own and hold such interest in fee, which is an undivided half thereof; that these defendants are now, and have been for the past twenty-five days, in

the actual, quiet, and peaceful occupation and possession of the north twelve hundred and thirty-eight (1,238) feet of said New Discovery lode, vein, and premises, working and mining the same.

17. These defendants further allege that the top, outcrop, and apex of said New Discovery lode and vein is within the side lines of the survey and surface location thereof, as purchased from the Government of the United States, and the said vein and lode of the said New Discovery, so as aforesaid sold to Fryer and Borden by the Government of the United States, and now owned and possessed by these defendants, so far departs from a perpendicular in its course downwards that it passes outside of the vertical side lines of the said New Discovery lode and the surface location thereof, and enters the land adjoining, and passes into the ground and premises the plaintiffs call the Little Pittsburg lode, and the lode, vein, or deposit now being worked by the plaintiffs, and which they call the Little Pittsburg lode, is the same and identical vein, lode, and deposit on which the discovery and location of the New Discovery lode was and is made, the top, summit, outcrop, and apex of which lode, vein,
271 and deposit is within the surface location of said New Discovery lode, and is the same lode and deposit for which said Fryer and Borden received the title in fee from the Government of the United States, under the name of the New Discovery lode, which fee the defendants now own as above stated. That the locations of the said New Discovery lode and the said Little Pittsburg lodes are nearly parallel with each other for the distance of some two hundred — eighty feet, as is shown by the map or plat hereto annexed and marked Exhibit "B," and made a part of this answer. That the said locations are about 100 feet apart at the nearest point.

18. That the said plaintiffs are mining, taking out, and extracting a very large quantity of rich and valuable mineral and ore from said lode, called by them the Little Pittsburg lode, and converting the same to their own use. That defendants are informed and believe that the amount mined out, extracted, and taken from said Little Pittsburg lode by said plaintiffs is not less than two hundred thousand dollars; that said lode is only valuable for the mineral found therein, and that when said rich and valuable mineral is mined and taken from said lode the lode and premises will be entirely valueless. That said plaintiffs have a large force of men working, mining, and extracting ore from said Little Pittsburg lode, and will continue so to do, unless restrained from so doing by an order of this honorable court. That the amount of ore taken out of said Little Pittsburg lode cannot be determined or estimated in a court of law, and these defendants are remediless in a
272 court of law, and can only have relief in a court of equity.

That the plaintiffs have no sufficient property outside of the said Little Pittsburg lode out of which a judgment at law could be collected for the trespasses upon the said lode, should the defendants obtain a judgment against the plaintiffs for the wrongful working of the said New Discovery lode. That the places and points on the premises called by the plaintiffs the Little Pittsburg lode, and where the plaintiffs are now working and mining out the rich and

valuable ore and mineral-bearing dirt and rock, lie between vertical planes drawn downward through the end lines of the location of the said New Discovery lode, and at that part thereof owned by defendants in fee as aforesaid, so continued in their own direction as to intersect the so-called Little Pittsburg lode.

And these defendants aver that said plaintiffs have made no discovery or opening to the vein or lode on said so-called Little Pittsburg lode outside of or beyond the end lines of such surface location of the said New Discovery lode so extended as last above set forth.

Wherefore the defendants demand judgment—

1st. That the complaint and this cross-complaint be heard together as one case.

2nd. That the plaintiffs be compelled to answer the cross-complaint, and that a temporary writ of injunction be issued in favor of these defendants and against the said plaintiffs, their agents, servants, employees, workmen, and lessees, and all persons claiming under them, or either of them, commanding and restraining them, and each of them, from in any way or manner mining, working upon, extracting or taking, drawing away, or removing any ore, dirt, or mineral-bearing rock from the lode, mine, and premises which the plaintiffs call and designate, or by whatsoever name such lode and premises are called by them, and called by the defendants the New Discovery lode, until the further order of this court in the premises.

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3rd. That an account may be had and taken of all the ore and mineral mined out, extracted, or taken from the said so-called Little Pittsburg lode and premises by the said plaintiffs, and that on the coming in of such account a judgment be entered in favor of the said defendants and against the said plaintiffs for the amount thereof. That on the final hearing of this case said temporary writ be made perpetual. And that the defendants may have such other and further or such other and different relief, or both, as is agreeable to equity and good conscience, and the equity of their case may require.

4th. That the defendants be dismissed and discharged from all costs and charges about this suit in that behalf expended.

CHARLES CAVENDER,
L. C. ROCKWELL,
JAMES Y. MARSHALL,
Attorneys for Defendants, Bissell, Foss, and Hunter.

STATE OF COLORADO, } ss:
Lake County, }

274 & 275 Charles R. Bissell and Simon H. Foss, being each severally sworn, each one for himself says: That he is one of the defendanss in the above-entitled cause, and has heard read the above and foregoing answer and cross-complaint and knows the contents thereof, and that the same is true of his own knowledge, except as

to the matters and things therein stated on information and belief, and that as to those matters and things he believes it to be true.

CHARLES R. BISSELL.
SIMON H. FOSS.

Sworn to and subscribed before me, this 11th day of October, A. D. 1878.

[SEAL.] WILLIAM H. LOOMIS,
Notary Public.

Endorsed on back as follows: In district court. Horace A. W. Tabor *et al. vs.* Charles R. Bissell *et al.* Answer and cross-complaint. Filed in district court Oct. 16, 1878. Jos. H. Wells, clerk.

A true and correct copy carefully compared.
(Signed) JOHN W. WEBSTER, *Examiner.*

276 EXHIBIT C.—(Signed) JOHN W. WEBSTER, *Examiner.*

Quit-Claim Deed.

EDWARD HANDLEY *et al.* to CHAS. J. REYNOLDS.

This deed, made this tenth day of November, in the year of our Lord one thousand eight hundred and seventy-eight, between Edward Handley, Amos R. Rawlings, and George W. Robertson, of the county of Johnson and State of Missouri, of the first part, and Charles J. Reynolds, of the county of El Paso and State of Colorado, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of ten thousand dollars, to the said parties of the first part in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have remised, released, sold, conveyed, and quit claimed, and by these presents do remise, sell, convey, and quit-claim, unto the said party of the second part, his heirs and assigns, forever, all the right, title, interest, claim, and demand which the said parties of the first part have in and to the following-described real estate, situate, lying, and being in the county of Lake and State of Colorado, to wit, the undivided one-fourth (¼) part of the Winnemuck lode and mine, on Frier's Hill, in California Mining District, and more particularly described as follows, to wit:

Beginning at corner No. 1, a pine post 4″x4″x5 feet long, marked
S. W. cor. No. 1, Winnemuck lode, whence discovery shaft
277 bears N. 56° 25′ E. 165 feet dist.; thence N. 15° 30′ E. 540.5
feet to cor. No. 2, a pine post 3½x3½ by 3 feet long, marked N. W. cor. No. 2, Winnemuck lode, and N. E. cor. No. 3 of Dive's lode, whence Homestake Peak bears N. 44.20 W. and a point on Mt. Massive bears S. 68° 48′ W.; thence from corner No. 2 N. 86° 5 E. 300 feet to cor. No. 3, a pine post 4″x4″x5 feet long, marked N. E. cor. No. 3 of Winnemuck lode; thence S. 15° 30′ W. 540.5 feet to cor. No. 4, a pine post, 4″x4″x4 feet long, marked S. E. cor. No. 4, Winnemuck lode; thence S. 86° 5′ W. 300 feet to corner No. 1, the place of beginning; variations in all courses 15° E.; and the

undivided one-fourth (¼) of the undivided one-half (½) of the New Discovery mine, on Freyer's Hill, in California Mining District, Lake county, State of Colorado. To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever of the said parties of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

AMOS R. RAWLINGS. [SEAL.]
EDWARD HANDLEY. [SEAL.]
GEORGE W. ROBERTSON. [SEAL.]

STATE OF MISSOURI, } ss:
County of Johnson, }

278 & 279 I, George W. Rayhill, a notary public in and for said county, in the State aforesaid, do hereby certify that Amos B. Rawlings, Edward Handley, and George W. Robertson, personally known to me as the person- whose name- are subscribed to the annexed deed, appeared before me this day in person — acknowledged that they signed, sealed, and delivered the instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal, this twenty-fifth day of November, A. D. 1878.

[SEAL.] (Signed) GEORGE W. RAYHILL,
Notary Public, Johnson County, Mo.

Qualified January 7th, 1878. Commission expires January 2d, 1882.

Recorded Dec. 2d, A. D. 1878, at 7 a. m.

STATE OF COLORADO, } ss:
Chaffee County, formerly Lake County, }

I, George Leonhardy, Co. clerk and recorder in and for said county, in the State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of quit-claim deed from Edward Handley *et al.* to Chas. J. Reynolds, as appears of record in book F, page 424, as now remains in my office.

Given under my hand and official seal, this 7th day of April, A. D. 1879.

[SEAL.] (Signed) GEO. LEONHARDY,
Co. Clerk & Recorder,
Per E. SHAUL, *Dep'ty.*

280 EXHIBIT D.—(Signed) JOHN W. WEBSTER, *Examiner.*

UNITED STATES OF AMERICA, *District of Colorado:*

In the Circuit Court of the United States for the District of Colorado.

SIMON H. FOSS and ABSALOM V. HUNTER, Complainants,
vs.
THE LITTLE PITTSBURG CONSOLIDATED MINING COMPANY, Def't.

Edward J. Handley, of lawful age, being produced, sworn, and examined, deposeth and saith as follows:

I am twenty-three years of age, and was born and raised in the State of Missouri. I came to Leadville, Colorado, in the month of May, 1878, and in company with George Robertson and Amos B. Rawlings, and worked together on what was then and now known as the Winnemuck and New Discovery lodes, ledges, or deposits, in California Mining District, in Lake county, Colorado. On the 30th day of September, 1878, the said Robertson, Rawlings, and myself were the owners of an undivided one-fourth ($\frac{1}{4}$) interest in the Winnemuck lode and one-fourth ($\frac{1}{4}$) of seven-sixteenths ($\frac{7}{16}$) in the New Discovery lode, and on that day we sold our said interests in both said lodes to Simon H. Foss, at and for the price and sum of fifteen thousand dollars, and made and acknowledged a deed therefor in the city of Leadville, Colorado. The deed was kept in our possession until we reached Colorado Springs, where we delivered the same to Absalom V. Hunter, cashier of the People's Bank, who, on
281 the order of the said Foss, paid to us the amount of the purchase money. After delivering the deed to Hunter and receiving our money therefor, Robertson, Rawlings, and myself returned to Lafayette county, Missouri, and arrived there on the seventh day of October, 1878. I heard nothing more about the matter until on or about the 24th day of November, 1878, when one Charles Cavender, of Leadville, Colorado, came to where Robertson, Rawlings, and myself were, in said Lafayette county, Missouri. He showed us a letter from Dr. Charles R. Bissell, which stated that he wanted us to make a quit-claim deed to one C. J. Reynolds for the same property theretofore conveyed by us to Simon H. Foss on the 30th of September, or thereabouts, as before stated. That the purpose and object he desired to accomplish was to compel Foss to divide with him the property we had sold to the said Foss. He also stated in the letter that we would not render ourselves liable to a criminal prosecution for making such deed. This was the substance of the letter, to the best of my recollection. The letter was read by us (Robertson, Rawlings, and myself), and returned to the said Cavender, since which time I have not seen it.

We also had a conversation with the said Cavender, in which he told us substantially the same thing. He then offered to give Robertson, Rawlings, and myself each one thousand dollars to go to Warrensburg, Missouri, and make the deed.

282 & 283 We did go to Warrensburg, but before doing anything further, I consulted a lawyer of that place by the name

of Sparks, who said I incurred no liability; I paid him two dollars for his advice, and then Robertson, Rawlings, and myself made the deed to Reynolds, and Cavender paid us each the sum of one hundred dollars, and ten dollars in addition to defray our expenses. The deed was delivered to Cavender, who left Warrensburg that night on the westward-bound train on the Missouri Pacific railroad, and we returned the next day to our homes in Lafayette county. Before Cavender left he told us that if anything happened about the matter for us to consult with Sparks, in whose office the deed was prepared and signed. I returned to Leadville, Colorado, in the month of February last, and have been here ever since. At the time we sold to Foss in September, 1878, Charles R. Bissell was trying to buy from us our interests in the Winnemuck and New Discovery, but my partner and myself refused to sell to him. And further deponent saith not.

(Signed) EDWARD HANDLY.

Subscribed and sworn to before me, this June 28, 1879.

[SEAL.] WM. L. BROSIUS,
Notary Public.

(Endorsed:) Exhibit D. Little Pittsburg injunction suit. Copy of affidavit of Edward Handley. Rockwell & Bissell, att'ys.

284 EXHIBIT F.—(Signed) JOHN W. WEBSTER, *Examiner.*

$4,389. THE PEOPLE'S BANK, COLORADO SPRINGS, *Oct.* 4, 1878.

Pay to the order of Amos B. Rawlings forty-three hundred and eighty-nine ($4,389) dollars.

(Signed) A. V. HUNTER, *Cashier.*

To BARTHOLOW, LEWIS & CO., *St. Louis, Mo.*

No. 5778.

[United States internal revenue stamp, two cents.]

(Endorsed:) Amos B. Rawlings, Patterson Stewart. Pay G. J. McGourkey, cashier. Pay F. W. Biebinger, cashier, or order, for collection on acc't of Bank of Kansas City. I. M. Smith, cashier. Clearing-house bank. Forty-three hundred and eighty-nine dollars.

EXHIBIT G.—(Signed) JOHN W. WEBSTER, *Examiner.*

$5,885.25. THE PEOPLE'S BANK, COLORADO SPRINGS, *Oct. 4th*, 1878.

Pay to the order of Geo. W. Robertson fifty-eight hundred eighty-five & $\frac{25}{100}$ dollars ($5,885.25).

(Signed) A. V. HUNTER, *Cashier.*

To BARTHOLOW, LEWIS & CO, *St. Louis, Mo.*

No. 5779.

[United States internal revenue stamp, two cents.]

(Endorsed:) George W. Robertson. Pay E. C. Buecke, cash'r, or order, for collection, account of the Morrison-Wentworth Bank

of Lexington, Mo. Wm. Morrison, cashier. St. Louis clearing-house, No. 7, Oct. 9, 1878. Exchange Bank. Fifty-eight hundred & eighty-five & $\frac{25}{100}$ dollars.

285 EXHIBIT H.

$4,389. THE PEOPLE'S BANK, COLORADO SPRINGS, *Oct.* 4, 1878.

Pay to the order of Edward H. Handley forty-three hundred and eighty-nine dollars.

(Signed) A. V. HUNTER, *Cashier.*

To BARTHOLOW, LEWIS & Co., *St. Louis, Mo.*

No. 5780.

(Endorsed:) Edward Handley. Pay E. C. Bueck, esh., or order, for collection, account of the Morrison-Wentworth Bank of Lexington, Mo. Wm. Morrison, cashier. St. Louis clearing-house, No. 7, Oct. 8, 1878. Exchange Bank. Forty-three hundred and eighty-nine dollars.

[Endorsed:] Exhibits F, G, & H. (Signed) John W. Webster, examiner.

286 EXHIBIT I.—(Signed) JOHN W. WEBSTER, *Examiner.*

EXHIBIT B.

This is a true copy of letter written by L. C. Rockwell and signed C. R. Bissell:

ALVORD HOUSE, DENVER, *Jan. 8th*, 1879.

Messrs. Foss & HUNTER.

GENTLEMEN: In regard to the dispute which has arisen between us relative to the proper division of the profits from the L. P. C. M'g Co., now in the First Nat. B'k, will say I regret very much to say or do anything which tends to sever the friendly relations hitherto existing between us, but business is business, and I cannot consent to any such division as you propose, because it would be contrary to justice and my rights in the case. I will do this: You concede me $\frac{3}{12}$ths; I claim $\frac{7}{12}$ths; you consent; I draw my $\frac{3}{12}$ths, you draw your $\frac{5}{12}$ths, and leave the $\frac{4}{12}$ths to be settled hereafter. Have notified the bank not to pay any of this until this question was settled. I shall hold the bank for my $\frac{7}{12}$, and do not wish to make the bank trouble, nor to place it in an awkward position, and have told them not to accept from you any bond or other security. I c'aim $\frac{4}{12}$ individually and $\frac{3}{12}$ as the agent of C. J. Reynolds. If you wish to do this, notify L. C. Rockwell at Central, and he can arrange the dr'w'g of it at once.

Yours, truly, C. R. BISSELL.

The above is a true copy of C. R. Bissell's letter to Hunter & Foss, marked Exhibit B.

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C. R. Bissell. L. C. Rockwell. C. R. Bissell.	Return to L. C. Rockwell, Denver, Colorado, If not delivered 10 o-o.	[Denver, Jan. 9, Colo.]	[Stamp.]

HUNTER & FOSS,
Care People's Bank,
Colorado Springs,
Colorado.

(Endorsed:) Copy of L. C. Rockwell & C. R. Bissell letter to Hunter & Foss.

288 (Copy.)

EXHIBIT J.—(Signed) JOHN W. WEBSTER, *Examiner.*

DENVER, COLO., *Jan. 8th*, 1879.

To the First Nat'l Bank of Denver:

I hereby forbid the payment of any part or portion of the money deposited with you to the joint credit of Absalom V. Hunter, Simon H. Foss, and myself, as our proportion of the dividend derived from the Little Pittsburg Consolidated Mining Company. There is a contract signed by each of us that this money cannot be drawn without the joint signatures of all of us to the order. I claim ($\frac{7}{12}$) seven-twelfths of it. They deny my right to but ($\frac{3}{12}$) three-twelfths. Until this dispute is adjusted, I cannot consent to the withdrawing of any of it. This ($\frac{7}{12}$) but ($\frac{4}{12}$) is my own; the other ($\frac{3}{12}$) as agent and attorney for C. J. Reynolds.

Very truly,
(Signed) C. R. BISSELL.

(Endorsed:) Copy of notice of C. R. Bissell. Served on First Nat'l Bank, Denver.

289 EXHIBIT K.—(Signed) JOHN W. WEBSTER, *Examiner.* FOSS *vs.* BISSELL.

STATE OF COLORADO, } *ss.:*
County of Lake, }

In the District Court in and for said County of Lake. To the —— Term, 1879.

HORACE A. W. TABOR and AUGUSTUS RISCHE, Pl'ffs,
ag'st
CHARLES R. BISSELL, SIMON H. FOSS, ABSALOM V. HUNTER, impleaded with EDWARD HANDLEY, AMOS R. RAWLINGS, and GEORGE W. ROBERTSON, Defendants.

The joint and several answer of Charles R. Bissell, Simon H. Foss, Absalom V. Hunter, impleaded with Edward Handley, Amos R.

Rawlings, and George W. Robertson, who, for the first ground of defence to the complaint, say:

I. They and each of them deny that plaintiffs, or either of them, are the legal owners of, or are rightfully in the possession of, or have the legal right to hold, occupy, or possess the Little Pittsburg lode, vein, mine, or deposit of silver-bearing ore, or any part or portion thereof, as described in said complaint.

II. For a second defence to the complaint these defendants, and each of them, say that on the 20th of April, A. D. 1878, or at any time prior thereto, subsequent to the 29th day of March, A. D. 1878, the ground, lode, and premises called by plaintiffs the Little
290 Pittsburg, was or had been wholly unoccupied, or that plaintiffs and George F. Hook, or either of them, had the legal right or any right at all to enter upon or occupy the said lode they call the Little Pittsburg, or so much of the same as is subsequently called and described as the Winnemuck or New Discovery lodes or deposits.

III. For a third defence to the complaint these defendants, and each of them, say whether or not on the 1st day of May, A. D. 1878, or at any other time, the plaintiffs and said Hook, or either of them, marked said so-called Little Pittsburg lode, or caused the same to be surveyed and recorded at the times and in the manner described and alleged in the complaint, these defendants have not and cannot obtain sufficient knowledge or information upon which to base a belief.

IV. That these defendants, and each of them, say that the original location certificate did not or the second and third amended ones did not conflict and interfere with the existing rights of other persons, viz., with those of defendants.

V. These defendants, and each of them, deny that the shaft called the discovery in the plaintiff's complaint was or is at or upon the apex, summit, or outcrop of the lode or body of mineral plaintiffs call the Little Pittsburg.

VI. That whether said George F. Hook has sold and conveyed his supposed interest in and to the so-called Little Pittsburg
291 lode to the plaintiff these defendandants have not nor cannot obtain sufficient knowledge or information on which to base a belief.

But these defendants deny that the plaintiffs are the owners of or entitled to the possession of the so-called Little Pittsburg lode; that they deny that plaintiffs and said Hook, or either of them, struck the lode, vein, or deposit at the depth of twenty-six (26) feet from the surface, which they subsequently called the Little Pittsburg.

VII. For a further defence to said complaint these defendants, and each of them, say they deny that they or either of them ever at any time entered upon the Little Pittsburg lode or any part or portion thereof. They deny that they or either of them ever entered into any old or abandoned shaft about 400 feet northeasterly from the workings of plaintiff on the said Little Pittsburg lode, or at any

other point on said claim or premises called by plaintiff the Little Pittsburg, except as hereinafter stated.

VIII. These defendants deny that they or either of them, on or about the last of June, 1878, or at any other time, surveyed, located, or recorded any part or portion of the so-called Little Pittsburg lode, and called it the "Winnemuck" or "Winnemucca" lode.

IX. These defendants deny that at the time they proceeded to survey, locate, and record the said Winnemuck lode, as hereinafter described, stated that they had neither struck, found, nor discovered any lode, vein, or deposit of mineral whatever.

292 X. That defendants, and each of them, deny that they, on or about the 15th day of August, 1878, or at any other time, at the depth of 180 feet from the surface, or at any other depth, struck or cut the vein or lode of plaintiffs, or that they have at any time taken, mined, or got out any ore of plaintiffs from any lode or vein whatever.

XI. That these defendants, and each of them, deny that they or either of them are not able to respond in damages for all sums of money and pay any judgment at law which plaintiffs can or will ever recover against them for any or all real or imaginary injury they or either of them will sustain by reason of the acts and doings of these defendants in working on the lode, vein, and premises they call the Winnemucke, and they deny that they, the plaintiffs, are remediless at law, but, on the contrary thereof, they aver that they have a full, ample, and complete remedy at law, by way of an action for the possession of said premises, if they are entitled to any relief.

XII. These defendants, and each of them, deny that the plaintiffs ever served any written notice on them, requesting them to stop or cease work on said Winnemuck lode or any part or portion thereof.

XIII. These defendants, and each of them, for a further defence to said action, say they are informed and believe, & so charge the fact to be that on or about the 28th day of March, A. D. 1878, William H. Van Boxall and George Davidson, both citizens of

293 the U. S., went upon vacant and unoccupied lands and public domain of the United States, and began to explore, search, & prospect for mineral-bearing veins, lodes, & deposits, and on or about the 12th day of April, A. D. 1878, they found and discovered a lode, vein, & deposit of mineral-bearing rock, which had not theretofore been discovered or previously known to exist, which they then called, named, and designated as the "Winnemuck lode."

That said Van Boxall & Davidson at that time, or just previously thereto, marked said lode, vein, and deposit of mineral which they had then just discovered by placing at the point of discovery a plain sign or notice containing the name of the lode, which was the "Winnemuck," the date of discovery, which was the 29th day of March, 1878, the name of the discoverers, which were Wm. H. Van Boxall and Geo. Davidson, and the number of feet claimed on each side of the discovery shaft on lode, and the general course of the same, & the number of feet claimed on each side of the crevice on said lode; also by marking the corners of the surface-ground of said "Winnemuck lode" by a plain sign or notice, stating on the respect-

ive posts the particular position it occupied towards said Winnemuck lode, and when the claim was so marked the boundaries thereof could be readily traced.

That said Van Boxall and Davidson kept actual possession of said Winnemuck lode and premises from the time they first began to work on the same until on or about the 15th day of April, A. D.
294 1878, at which time they sold an undivided three-fourths ($\frac{3}{4}$) interest in and to the said Winnemuck lode to Charles R. Bissell, Absalom V. Hunter, and Simon H. Foss, who were then, and are now, citizens, who at once entered into the occupation and possession of said lode and premises, together with said Van Boxall and Davidson. And they continued to work, mine, occupy, and possess the said Winnemuck lode continuously, & to work and mine the same & sink upon the same with reasonable diligence from that time until the present.

That on or about the 20th day of June, A. D. 1878, said Van Boxall, Bissell, Hunter, Davidson, and Foss caused said lode to be surveyed & a location certificate thereof made & signed & recorded in the office of the clerk and recorder of Lake county, Colorado, on the 28th day of June, A. D. 1878. That previous to the recording of the said lode the surface boundaries of the claim was marked by six substantial posts set in the ground; one of said posts was set at each of the 4 corners of said lode & claim, another stake was set at the center of east side line of said claim, each of said posts was hewn on the side in towards the claim, & marked with writing & letters, stating the position it occupied towards the said claim & lode.

The discovery shaft of said lode was also marked with a plain sign and notice as first above set forth.

That a description of said lode as taken from the location certificate is as follows:

"Know all men by these presents that we, the undersigned,
295 did on the twentieth (20) day of June, 1878, claim by right of location five hundred and forty and 12 feet linear and horizontal measurement in length, and 282.3 feet in width on the 'Winnemuck' lode, along the vein thereof, with all its dip, variations, and angles, as allowed by law, 453.5 feet of said lode so located lying and being N. 15° 30′ E. of the discovery shaft on said lode, and 87 feet being S. 15° 30′ W. of said shaft. The location and bounds of said claim being marked and described more particularly as follows, to wit: Beginning at corner No. 1, a pine post 4′x4′x5 feet long, marked S. W. cor. No. 1, Winnemuck lode, whence discovery shaft bears N. 56° 25′ E. 165 feet dist.; thence N. 15° 30′ E. 540.5 feet to corner No. 2, a pine post 3½′x3½′x3 ft. long, marked N. W. cor. No. 2, Winnemuck lode, and N. E. cor. No. 3 of Dive's lode, whence Homestake Peak bears N. 44° 20′ W. and a point on Mt. Massive bears S. 68° 48′ W.; thence from corner No. 2 N. 86° 05′ E. 300 feet to corner No. 3, a pine post 4′x4′x5 ft. long, marked N. E. cor. No. 3 of Winnemuck lode; thence S. 15° 30′ W. 540.5 feet to corner No. 4, a pine post 4′x4′x4 ft. long, marked S. E. cor. No. 4, Winnemuck lode; thence S. 86° 05′ W. 300 feet to corner No. 1, the place of beginning."

That by virtue of the discovery and location of said Winnemuck

lode, said defendants, together with said Van Boxall and Davidson, became and were the absolute owners of said lode, together with all other lodes, veins, ledges, or deposits, the top or apex of which
296 lie inside the surface boundary of said claim.

That on the 15th day of April, A. D. 1878, the discovery shaft of said Winnemuck had been sunk to the depth of at least 12 feet, and said Van Boxall and Davidson had found and discovered therein mineral-bearing rock, ore, and dirt which assayed four ounces in silver to the ton, and at the time of the locating said lode said shaft was at least 130 feet deep, and had crevice material, mineral rock in place & ore dirt, which assayed 66 ounces of silver per ton; that such crevice material, mineral, rock in place was clearly & well defined in said shaft.

That afterwards, and on or about the 27th day of July, 1878, said William H. Van Boxall and George Davidson sold and conveyed, by a good and sufficient deed of conveyance all their right, title, and interest in and to said Winnemuck lode and premises to Edward H. Handley, Amos B. Rawlings, and George W. Robertson, who were all citizens, &c., and delivered the possession of their interest in said lode and premises to them, who at once entered into the occupation and possession of said lode and premises with said Bissell, Foss, and Hunter, who worked and mined said lode and premises, and took therefrom ore and mineralized rock and dirt until on or about the first day of October, 1878, at which time said Rawlings, Handley, and Robertson sold and conveyed all their right and title in and to said premises to said Simon H. Foss, who holds the title thereto for the use of said Bissell & Hunter and himself; and said Rawlings, Handley, and Robertson at the time of
297 making their said deed delivered to these defendants all their possession, who are now occupying and possessing the same.

XIV. That these defendants and their grantors have spent in the developing said Winnemuck lode at least six thousand dollars; that they and their grantors have been in the actual and continuous occupation of said lode and premises from the 28th or 29th of March, 1878, until this time.

XV. That on or about the 30th day of April, the said plaintiffs and one George F. Hook, and at other times as mentioned in said complaint, extended a survey and surveys of premises which they call the Little Pittsburg lode over the ground and premises which these defendants and their grantors had been in the actual, open, and notorious occupation and possession of under the name of "Winnemuck" ever since the last of March, 1878, as is represented by the accompanying map hereto annexed and marked Exhibit "A," and is made a part of this answer.

That these defendants and their grantors were the first on the ground, and were the first to strike crevice material, mineralized rock, dirt, and ore, and have, by virtue of the first appropriation of the ground in dispute, the better & paramount right to the same & the ore & pay material now being mined & taken from the lode, ground, & premises in dispute.

XIV. These defendants, by way of an answer in the nature of a cross-complaint, upon their information and belief aver and charge that on or about the 4th day of March, A. D. 1878, George H. Freyer and Josiah A. Eads, citizens, &c., went upon the public domain of the United States to explore and prospect for mineral-bearing
298 lodes, veins, and deposits; that on or about the last-named date they found and discovered a lode which had not previously been known to exist, which lode they named, called, and designated the "New Discovery" lode; that said lode is a silver-bearing one, and is described as follows, to wit:

Beginning at corner No. 1, a post set in the ground, whence United States locating monument No. 1 bears S. 65° 20′ W. 5,683.57 feet, thence from cor. No. 1 E. 300 feet to corner No. 2 a pine post, thence N. 10° W. 1,500 feet to corner No. 3 a pine post, thence W. 300 feet to corner No. 4 a pine post, thence S. 10° E 1,500 feet to corner No. 1 to the place of beginning; making a piece of ground fifteen hundred feet in length by three hundred feet in width, situate in California Mining District, Lake county, Colorado.

That on the 3rd day of May, A. D. 1878, said Josiah A. Eads sold and conveyed all his right, title, and interest in and to said "New Discovery" lode to William Borden, a citizen, &c.

That afterwards and on the 18th day of May, 1878, said George H. Fryer and said William Borden made application to enter and pay for said New Discovery lode and surface ground connected therewith, & receive a patent therefor from the Government of the United States; that such application was made in the United States land office at Fairplay, in the State of Colorado; that such proceedings were afterwards had in said matter that on or about the 1st day of August, 1878, said Fryer and Borden entered and paid for
299 said premises & lode in the said United States land office, and received the register's certificate of final entry and the receiver's receipt of payment for said claim, premises, & New Discovery lode.

That on the final entry and payment of said lode & premises in said land office said Fryer & Borden became & were the owners in fee of the same.

That they so remained the owners thereof until on or about the 14th day of September, 1878, when said Borden sold & conveyed all his right, title, and interest in & to said New Discovery lode and vein to these defendants, but the deed for the same was made to Theodore Berdell and Nathan Witherall for the use and benefit of these defendants, and on this said 4th day of October, 1878, said Fryer sold and conveyed all his right and title in and to said New Discovery lode, vein, and premises to these defendants, who now own & hold such interest in fee, which was an undivided half thereof.

That these defendants are now, and have been for the past 20 days, in the actual, quiet, and peaceable occupation and possession of the north twelve hundred and thirty-eight (1,238) feet of said New Discovery lode, vein, and premises, working & mining the same.

XVII. These defendants further allege that the top, outcrop, and apex of said New Discovery lode and vein is within the side lines of the survey and surface location thereof as purchased from the Government of the United States, and the said vein and lode of this said New Discovery so as aforesaid sold to Fryer and Borden by the Government of the U. S., & now owned
300 and possessed by these defendants, so far departs from a perpendicular course in its course downward that it passes outside of the vertical side lines of this said New Discovery lode, & the surface location thereof, and enters the land adjoining, and passes into the ground and premises — the plaintiff, call- the Little Pittsburg lode; and the vein, lode, and deposit now being worked by the plaintiffs, and which they call the Little Pittsburg lode, is the same & identical vein, lode, & deposit on which the discovery & location of the New Discovery was and is made, the top, summit, apex, & outcrop of which lode, vein, & deposit is within the surface location of said New Discovery lode, and is the same lode & deposit of which said Fryer & Borden received the title in fee from the Government under the name of the New Discovery lode, which fee the said defendants now own, as above stated.

That the locations of this said New Discovery lode, and the said Little Pittsburg lode, are nearly parallel with each other for the distance of some two hundred and eighty feet thereof, as is shown by the map or plat hereto annexed and marked Exhibit "B," & made a part of this answer.

That the said locations are about 100 feet apart at the nearest point.

XVIII. That the said plaintiffs are mining, taking out, & extracting & mining out a very large quantity of rich & valuable mineral & ore from said Little Pittsburg lode, & converting the same to their own use.

That defendants are informed and believe that the amount mined out, extracted, and taken from said Little Pittsburg lode by said plaintiffs is not less than two hundred thousand dollars.
301 That said lode is only valuable for the mineral found therein; that where said rich & valuable ore & mineral is mined and taken from said Little Pittsburg the lode & premises will be entirely valueless.

That said plaintiffs have a large force of men working, mining, and extracting ore from said Little Pittsburg lode, & will continue so to do unless restrained from so doing by an order of this honorable court; that the amount of ore taken out of said Little Pittsburg lode cannot be determined or estimated in a court of law, and these defendants are remediless in a court of law, & can only have relief in a court of equity.

That the plaintiffs have no sufficient property outside of this said Little Pittsburg lode out of which a judgment at law could be collected for the trespasses upon this said lode, should the defendants obtain a verdict against the plaintiffs for the wrongful working of this said New Discovery lode.

That the place & points on the premises, called by the plaintiffs

the Little Pittsburg lode, & where the plaintiffs are now working and mining out the rich and valuable ore & mineral-bearing dirt & rock, lie between vertical planes drawn downwards through the end lines of the said New Discovery lode, & of that part thereof owned by defendants in fee as aforesaid, so continued in their own direction as to intersect the so-called Little Pittsburg lode, vein, or deposit, and within that portion thereof so as aforesaid owned in fee by these defendants.

And these defendants aver that said plaintiffs have made no discovery or openings to the vein or lode on said so-called
302 Little Pittsburg lode outside of or beyond the end lines of said surface location, so extended as last above set forth.

Wherefore the defendants demand judgment—

1st. That this complaint and the cross-complaint be heard together as one case.

2nd. That the plaintiff- be compelled to answer the cross-complaint, and that a temporary writ of injunction be issued in favor of these defendants and against the said plaintiffs, their agents, servants, employees, workmen, and lessees, & such lessees and all persons claiming under them, or either of them, commanding and restraining them and each of them from in any way or manner mining, working upon, extracting or taking, drawing or removing any ore, dirt, or mineral-bearing rock from the lode, mine, & premises the plaintiffs call & designate as the Little Pittsburg lode, or by whatsoever name such lode & premises are called by them, & called by the defendants the New Discovery lode, until the further order of this court in the premises.

3rd. That an account may be had & taken of all the ore & mineral mined out, extracted, or taken out of the said Little Pittsburg lode and premises by the said plaintiffs, and that on the coming in of such accounting that a judgment be entered in favor of the said defendants and against the said plaintiffs for the amount thereof; that on the final hearing of this case said temporary writ be made perpetual, and that the defendants may have such other &
303 such further or such other and different relief as is agreeable to equity and good conscience and the nature of their case may require.

4th. And that the defendants be dismissed and discharged from all costs and charges about this suit in that behalf expended.

End of Exhibit K.

(Signed) JOHN W. WEBSTER, *Examiner.*

304 EXHIBIT L.—(Signed) J. W. WEBSTER, *Examiner.*

Mining Deed.

ABSALOM V. HUNTER *et al.* to SIMON H. FOSS.

This indenture, made the 30th day of September, in the year of our Lord one thousand eight hundred and seventy-eight, between Absalom V. Hunter, Amos B. Rawlings, Edward Handley, George W. Robertson, of the county of Lake and State of Colorado, parties of

the first part, and Simon H. Foss, of the county of Lake and State of Colorado, party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of thirty thousand dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, and released and forever quit-claimed, and by these presents do grant, bargain, sell, remise, release, and forever quit-claim, unto the said party of the second part, and to his heirs and assigns: Beginning at corner No. 1, a pine post 4″x4″x5 feet long, marked S. W. corner No. 1, Winnemuck lode, whence discovery shaft bears N. 56° 25′ E. 165 feet distant; thence N. 15° 30′ E. 5405 feet to corner No. 2, a pine post 3½″x3½″x3 feet long, marked N. W. corner No. 2, Winnemuck lode, and N. E. corner No.
305 3 of Dive's lode, whence Homestake Peak bears N. 44° 20′ west, and a point on Mt. Massive bears S. 68° 48′ W.; thence from corner No. 2 N. 86° 5′ east 300 ft. to corner No. 3, a pine post 4″x4″x5 ft. long, marked N. E. corner No. 3 of Winnemuck lode; thence S. 15° 30′ W. 540.5 feet to corner No. 4, a pine post 4″x4″x4 ft. long, marked S. E. corner No. 4, Winnemuck lode; thence S. 86° 5′ W. 300 feet to corner No. 1, the place of beginning, the variations of the magnetic needle on all courses being 15° east. The above conveys an undivided one-half interest in the Winnemuck lode, situate in California Mining District, of Lake county, Colorado; also their entire interest in the lode commonly known as the New Discovery lode, being three and one-half sixteenths of the whole mine, said New Discovery lode being situate in California Mining District, of Lake county, Colorado.

Together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock, and earth therein, and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments, and
306 appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof; and also all the estate right, title, and interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in, or to the said premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

ABSALOM V. HUNTER. [SEAL.]
AMOS B. RAWLINGS. [SEAL.]
EDWARD H. HANDLEY. [SEAL.]
GEORGE W. ROBERTS. [SEAL.]

Signed, sealed, and delivered in presence of—
W. A. NORTHRUP.
FRED LEASLER.

STATE OF COLORADO, } ss:
County of Lake, }

I, W. A. Northrup, a notary public in and for said county, in the State aforesaid, do hereby certify that Absalom V. Hunter, Amos B. Rawlings, Edward H. Handley, and George W. Robertson,
307 personally known to me as the persons whose names are subscribed to the annexed deed, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal, this first day of October, A. D. 1878.

[SEAL.] W. A. NORTHRUP,
Notary Public.

Recorded Dec. 30th, A. D. 1878, at 11 a. m.
JAS. H. WELLS, *Recorder,*
Per E. SHAUL, *Dep'ty.*

RECORDER'S OFFICE, GRANITE,
CHAFFEE COUNTY, COLORADO.

I hereby certify that the foregoing was taken from the records, and is a true and correct copy of the same.

Given under my hand and the county seal, this 3rd day of December, 1879.

[SEAL.] JAMES H. JOHNSON,
County Clerk and Recorder.

308 EXHIBIT M.—J. W. WEBSTER, *Examiner.*

Mining Deed.

SIMON H. FOSS to ABSALOM V. HUNTER.

This indenture, made the second day of October, in the year of our Lord one thousand eight hundred and seventy-eight, between Simon H. Foss, of the county of Lake, and State of Colorado, party of the first part, and Absalom V. Hunter, of the county of El Paso and State of Colorado, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of thirty thousand dollars, lawful money of the United States of America to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, and forever quit-claimed, and by these presents does grant, bargain, sell, remise, release, and forever quit-claim unto the said party of the second part, and to his heirs and assigns, an undivided five-twelfths ($\frac{5}{12}$) interest in and to the Winnemuck lode, lodge, or deposit, situate in California Mining District, Lake county, Colorado, described as follows, to wit: Beginning at corner No. 1, a pine
309 post 4x4x5 feet long, marked S. W. cor. No. 1, Winnemuck lode, whence discovery shaft bears N. 56° 25′ E. 165 feet dist.; thence N. 15° 30′ E. 540.05 feet to cor. No. 2, a pine post $3\frac{1}{2}$x$3\frac{1}{2}$x3

feet long, marked N. W. cor. No. 2, Winnemuck lode, and N. E. cor. No. 3, Dive's lode, whence Homestake Peak bears N. 44° 20′ W. and a point on Mt. Massive bears S. 68° 48′ W.; thence from cor. No. 2 N. 86° 5′ E. 300 ft. to cor. No. 3, a pine post 4x4x5 ft. long, marked N. E. cor. No. 3, Winnemuck lode; thence *thence* S. 15° 30′ W. 540.5 ft. to cor. No. 4, a pine post 4x4x4 ft. long, marked S. E. cor. No. 4, Winnemuck lode; thence south 86° 05′ W., marked 300 ft. to cor. No. 1, the place of beginning, the variations of the magnetic needle on all courses being 15° E. Also, an undivided $(\frac{35}{1920})$ thirty-five one hundred and ninety- seconds of the north (1,238) twelve hundred and thirty-eight feet of the New Discovery lode, situate in California Mining District, Lake county, Colo., and more particularly described in official survey, No. —, on file in the land office at Fairplay, Park county, Colo., together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver-bearing quartz rock and earth therein; and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had
310 and enjoyed; and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the said premises, and every part and parcel thereof, with the appurtenances, to have and to hold, all and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever. In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

[SEAL.] SIMON H. FOSS.

Signed, sealed, and delivered in presence of—
GEO. W. TRIMBLE.

STATE OF COLORADO, } *ss:*
County of Lake, }

I, Wm. L. Brosius, a notary public in and for said county, in the State aforesaid, do hereby certify that Simon H. Foss, personally known to me to be the person whose name is subscribed
311 to the annexed deed, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this eighteenth day of December, A. D. 1878.

[SEAL.] WM. L. BROSIUS,
Notary Public.

Recorded Dec. 30th, A. D. 1878, at 11 a. m.
JAS. H. WELLS, *Recorder,*
Per E. SHAUL, *Deputy.*

RECORDER'S OFFICE,
GRANITE, CHAFFEE COUNTY, COLORADO.

I hereby certify that the foregoing was taken from the records, and is a true and correct copy of the same.

Given under my hand and the county seal, this 3d day of December, A. D. 1879.

[SEAL.] JAMES H. JOHNSTON,
County Clerk and Recorder.

312 UNITED STATES OF AMERICA, *District of Colorado:*

To the honorable the judges of the circuit court of the United States for the district of Colorado, northern division, in chancery presiding:

I, John W. Webster, one of the examiners in chancery, duly appointed by virtue of an order of the circuit court of the United States for the district of Colorado, also by virtue of the stipulation and agreement of counsel of the respective parties in this cause, hereto annexed, and in accordance with the 67th rule of the Supreme Court and amendments, do hereby most respectfully certify and report unto your honors that Simon H. Foss, Edward H. Handley, George W. Trimble, and Absalom V. Hunter, witnesses on behalf of the interpleading defendants Foss and Hunter, and Charles R. Bissell, Lewis C. Rockwell, Charles Cavender, and Nelson Halleck, witnesses on behalf of interpleading defendant Charles R. Bissell in said cross-bill, who, previous to the commencement of their respective examinations herein, were by me first duly cautioned and sworn, upon their respective oaths, to testify the truth, the whole truth,
313 and nothing but the truth in relation to the matters in controversy between The First National Bank of Denver, complainant, and Simon H. Foss, Absalom V. Hunter, and Charles R. Bissell, defendants, in a certain suit or matter now pending and undetermined in said court upon proceedings, by the way of cross-bill, filed therein; that the testimony of said witnesses was taken and reduced to writing before me at the city of Denver, in the county of Arapahoe, and State of Colorado, it having been expressly agreed and stipulated by the attorneys of the respective parties defendant in this cause that the reading of the deposition to the witnesses and the signature of the witnesses are expressly waived (see folio 350); said depositions to be used and read in evidence in this cause in the same manner and to the same effect as though the above formalities had been fully complied with under the rule.

And I further certify and report that the interpleading defendants introduced in evidence in this cause papers and documents marked, respectively, Exhibits "A," "B," "C," "D," "E," "F," "G," "H," "I," "J," "K," "L," and "M," all of which said exhibits are hereto attached and made a part of this report of testimony,
314 & 315 except Exhibit "E," which is an account book, and cannot well be attached hereto, and is returned herewith and filed with the clerk, properly referred to and identified as a part of the testimony herein, and were all the exhibits introduced in evi-

dence before me, and are referred to [by] their respective folios in the index hereto attached.

And I further certify and report that I have folioed said testimony consecutively from No. 1 to No. —, in said red ink figures on the left-hand margin thereof, and that the taking of testimony before me was continued from time to time as stipulated and agreed upon by the counsel of the respective parties, as hereinbefore noted, and that I have noted such other stipulations as were made by counsel touching the taking of said testimony.

And I further certify that I am not an attorney, solicitor, or of counsel for either of the parties in this cause, or otherwise interested in the event of this suit.

All of which is respectfully submitted.

JOHN W. WEBSTER,
Examiner.

Denver, May 5th, 1880.

316 *Examiner's Fees.*

To taking, preparing, and filing testimony on the part of Foss and Hunter, interpleading defendants:

196 fos. @ 20c.	$39 20
1 day's attendance @ $3	3 00
Total	$42 20

Received payment of Foss and Hunter,
JOHN W. WEBSTER,
Examiner.

Examiner's Fees.

Taking, preparing, and certifying for filing the testimony on the part of Dr. Bissell:

Testimony, 237 fos. @ 20; copy Exhibit "B," 44 fos., 2.81	56 20
4 days' attendance @ $3.00	12 00
Total	$68 20

Received payment of Dr. Bissell at the hands of L. C. Rockwell,
JOHN W. WEBSTER,
Examiner.

317 *Index to the Testimony.*

Foss and Hunter, interpleading defendants.

Witnesses:

Simon H. Foss,	direct	examination	from	folios	4	to	31.
"	cross	"	"	"	31	"	56.
"	redirect	"	"	"	56	"	61.
"	cross	"	"	"	61	"	63.
Edward H. Handley,	direct	"	"	"	63	"	88.
"	cross	"	"	"	88	"	96.
"	redirect	"	"	"	96	"	102.

George W. Trimble, direct examination from folios 102 to 130.
" cross " " " 130 " 141.
" redirect " " " 141 " 144.
Absalom V. Hunter, direct " " " 144 " 187.
" cross " " " 187 " 195.
" redirect " " " 195 " 196.

Dr. Charles R. Bissell, interpleading defendant.

Witnesses:

Charles R. Bissell, direct examination from folios 197 to 236.
" cross " " " 236 " 304.
" redirect " " " 304 " 305.
Lewis C. Rockwell, direct " " " 306 " 316.
" cross " " " 316 " 340.
Charles R. Bissell, recalled " " " 341 " 343.
" cross " " " 343 " 350.
Nelson Halleck, " ex. " " " 421 " 432.

318 *Stipulations of Attorneys.*

1st stipulation at folio 60.
2nd " " " 243.
3rd " " " 350.

Exhibits.

Exhibit "A," introduced and referred to at folios 17, 38.
" B, copy per stipulation " " " " 53 to 60.
" B, introduced " " " " 60.

Wording of Exhibit "B," referred to at folios of testimony, will be found at folio 24.

Of Exhibit "B," hereto attached and also referred to in testimony, at folios 104, 130 to 138.

Exhibit C, introduced and referred to at folio 79.
Letter read & copied in evidence at folio 83 to 86.
Exhibit D, introduced & referred to at folio 96.
Exhibit E (book of accounts, detached), " 122, 140.
Exhibit F, introduced and referred to at folio 160.
Exhibit G, " " " " " " 160.
Exhibit H, " " " " " " 160.
Paper read in evidence & copied into testimony at folios 165 to 168.
Telegram " " " " " " 179.

319 Exhibit "I," introduced and referred to at folios 182, 185.
" J, " " " " " " 182.
Exhibit K, " " " " " " 355.
" L, " " " " " " 432.
" M, " " " " " " 432.

(Signed) JOHN W. WEBSTER,
Examiner.

Denver, May 6th, 1880.

[Endorsed:] 247. First National Bank of Denver *vs.* Simon H. Foss, Absalom V. Hunter, & Charles R. Bissel. Examiner's report of testimony. Filed May 6, 1880. (S'd) Edward F. Bishop, clerk.

320

1878.		
Aug. 26.	Rec'd of Eddy & James, for 4,864 lbs. of ore. See ctf. No. 1	187 50
27th.	Rec'd of Eddy & James, for 15,950 lbs. ore. See ctf. No. 2	449 81
29.	Rec'd of Burdell & W., for 4,238 lbs ore. Ctf. No. 3...	120 52
Sept. 2.	Rec'd of Eddy & James, for 21,782 lbs. ore	807 24
	For 9,240 lbs. ore. See cert. No. 4	39 27
5.	Rec'd of Eddy & James, for 33,002 lbs. ore. No. 5	1,229 60
5.	Rec'd of J. B. Grant, for 14 ton 874 lbs. ore. Ctf. No. 6..	1,894 13
14.	Rec'd of J. B. Grant, for 53 tons ore. Ctf. No. 7	9,215 64
14.	Rec'd of J. B. Grant for 18.1847 tons ore. Ctf. No. 8..	1,470 35
14.	Rec'd of Berdell & W. See ctf. No. 9	5,420 34
23.	Rec'd of Berdell & W. See ctf. No. 10	2,197 02
"	Rec'd of Eddy & James. See ctf. No. 11	9,250 33
24.	Rec'd of Berdell & W. See ctf. No. 12	356 90

321

1878.		
	Am't forward	32,638 65
Sept. 26.	Rec'd Aug. R. Meyer & Co. No. 13	583 13
28.	Rec'd Eddy & James. No. 14	4,431 48
Oct. 4.	Rec'd Berdell & Co. No. 15..	3,935 55
	To accom-odate	01
"	Rec'd N. Hallack	5,000 00
Sept. 14.	" Eddy & James on ac...	500 00

'78.	Paid Out.	
Aug. 29.	P'd Tribe & Jefferay for 2 books	90
28.	Paid Darby & Johnson for survey, maps, &c	15 00
	By check returned	583 66
	"	7 50
	"	14 88
	"	22
	"	17 22
	"	24 50
	"	9 20
	"	18
	"	57 50
	"	18 00
	"	21
	"	15
	"	18
	"	10 03
	"	85 56
	"	20,000
	"	25
	"	2 65
	"	4 50
	"	1
	"	14 50
	"	16
	"	49 50
	"	50
	"	18 25
	"	50
	"	12
	"	14 50
	"	9
	"	38 50
	"	78 47
	"	13 50
	"	15
	"	16
	"	144 50
	"	14 40
	"	21
	"	600
	"	12 25
	"	12 50
	"	50 42
	"	200
	"	100 25
	"	3 50
	"	165
	"	42
	"	16
	"	11 50
	"	16 50
	"	11 50
	"	13
	"	13
	"	13
	"	100
	"	12 50
	"	30
	"	3
	"	15
	"	200
	"	14 25
	"	10
	"	20 02
	"	100
	"	45
	"	10
	"	14
	"	13
	"	14
	"	14
	"	16 50
	"	19
	"	8 75
	"	14 75
	"	14
	"	18

		47,088 82
Oct.	4. To Miners' Ex. Bank	23,415 85
10 |	5. Meyer & Co. for ctf. No. 16	34 16
10 |	5. Eddy & James. Ctf. No. 17	11,699 72
10 |	16. Eddy & James. Ctf. No. 18	7,132 57
10 |	21. Days overpaid, 1.50; Emerson, 1	2 50
	3. Cavender returns	70
	12. Berdell & W. Whim	125
	Use of horse	7 50
	18. Eddy & James. Ctf. No. 19	11,169 86
	" Berdell & W. Ctf. No. 20	945 31
	20. Aug. R. Meyer & Co. Ctf. No. 21	339 78
	23. Eddy & James. 22	847 06
		55,789 31

'78.		
Aug.	28. By check returned	27 15
	"	367 03
	"	14
	"	13
	"	4 50
	"	8 75
	"	18
	"	9 85
	"	6 39
	"	16
	"	16
	"	17 75
	"	18
	"	18
	"	5
	"	10 50
1878.	Am't forward	23,502 77
	By check returned	113 40
	"	7
	"	3
	"	29 70
	"	17 10
Oct.	4. By balance	23,415 85
		47,088 82

1 00	24	21	5 00
20,000	18	14 50	75
125	21	11 50	40
7 50	19 50	4 50	11 75
18	16	16 50	100
13	23	98 36	5,100
13	18	9	12
17 75	90	15	150
14 50	18	18	500
12	14 50	14 50	100
10	23	16	200
19 50	12 50	9	50
32 50	19 50	15	19
23	18	21	7
14 50	21	13	75 15
9 50	33	19	19 25
6 50	13	110	4
27 85	8 50	18	10
51 31	19 25	17	177
18	12	12 50	3 50
2 75	10 16	26 30	7
3 00	127	12 50	18
17 25	65	12 50	12
95	20	16	110 50
13	40	13	18 50
13	13 15	10	23 15
13	15	25 50	20 90
16	18	65	50
17 25	18	33 25	10 50
10	24	10	18
15	18	10 50	24 78
16 50	13	13	10 50
18	13	19	3
4 50	13	18	15
15	7	18	13
135	7 60	9	18
19	17 27	7	19
15	4 44	100	16
13	7 50	85 75	26 98
15 50	10 50	1	21
13	21	70	13
12 50	23	94 85	174 37
17 25	17 40	18	1,450
18	2 80	13	2 25
9	15 21	13	16 50
17 25	19 50	19	6 30
220 60	19 50	8 50	
10	27 47	13	
15	9	6 75	
20	105	17	
13	21	20	
12	100	13	
3 60	21	21	
13	6	16 50	
22 05		5	
112 30			

Nov.	23. By balance	$22,447 92
		55,789 31

322

1878.							
Nov. 23.	To balance	22,477 92		10	513		
Dec. 4.	Ctf. No. 23, J. B. Grant	253 82		75	135		
Dec. 5.	Ctf. No. 24, Berdell & W.	1,477 15		7	21		
Dec. 7.	Ctf. No. 25, Eddy & James.	9,631 43		57 75	18 50		
26.	Ctf. No. 26, E. & J.	9,924 32		8	9 47		
				7 90	10		
				15 57	9		
				11 50	10		
				50	7,156 84		
				175			10,388 99
				7			
				1,800			
				3 15			
				17 50			
				13 75			
				1 50			
				50			
				21 41			
				2 40			
				6			
				15 75			
				150			
			Dec. 23d.	By bal.			33,375 65
		43,764 64					43,764 64
Dec. 23.	To balance	33,375 65					22 90
24.	Ctf. No. 27, Eddy & James.	7,760 61					25
26.	Ctf. No. 28, Eddy & James.	6,120 13					9 95
12 | 30.	Bal. to cr. Foss, B. & H. New discovery ac.	8,856 70					80
							450
	Error charging check C. R. Bissell	7,156 84	Dec. 30.	By bal.			62,682 08
		63,269 93					63,269 93
							6
							5 55
							150
							35 90
			Feb. 11.	By bal.			62,484 63
Dec. 30.	To balance	62,682 08					62,682 08
		62,682 08		By check, Foss			15,672 48
				Bissell			7,500
1879.				Hunter			15,024
Feb. 11.	To bal.	62,484 63		"			1,000
" "	Dep. by Foss	51 31		Bissell			117 01
				"			847 30
				Hunter			15,218 31
				Bissell			7,156 84
		62,535 94					62,535 94

323

'79.			
Feb. 11.	S. H. Foss drew out ¼	15,672 48	
	Ret'd	51 31	
		15,621 17	
	C. R. Bissell ¼	7,156 84	
		7,500	
		117 01	
		847 30	
	$62,484.63, ¼	15,621 15	
	A. V. Hunter, ½	15,024	
		1,000	
		15,218 31	
	½ 62,484.63	31,242 31	
	Total	62,484 63	

Endorsed: No. 247. Circuit court. No. 247. Exhibit E. (Signed) John W. Webster, examiner. First National Bank of Denver *vs.* Simon H. Foss, Absalom V. Hunter, & Charles R. Bissell on cross-bill. Filed May 6, 1880. (Signed) Edward F. Bishop, clerk.

324 And afterwards, and on, to wit, the 7th day of May, A. D. 1880, came the said defendant, Charles R. Bissell, by L. C. Rockwell, Esq., his solicitor, and filed in said court and in said cause his exceptions to the master's report of testimony taken in this cause.

And said exceptions are in words and figures as follows, to wit:

Exceptions to Master's Report.

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

In the Circuit Court of the United States for District of Colorado, Northern Division thereof.

SIMON H. FOSS and ABSALOM V. HUNTER
vs.
CHAS. R. BISSELL and FIRST NATIONAL BANK. } Original Bill.

THE FIRST NATIONAL BANK
vs.
CHAS. R. BISSELL, SIMON H. FOSS, and ABSALOM V. HUNTER. } Cross-Bill.

325 Now comes the defendant, Charles R. Bissell, by J. Q. Charles and Rockwell and Bissell, his attorneys, and excepts to certain portions of the report of J. W. Webster, master in this cause, and to certain interrogatories and answers thereto, and each of them, for reasons hereinafter named, in the testimony of the following witnesses, to wit, Edward Handley, George W. Trimble, Absalom V. Hunter, Charles R. Bissell, and Charles Cavender, and asks that each of said questions and the answers thereto as hereinafter specified be expunged and suppressed for the following reasons, that is to say:

I.

That so much of the testimony of said Edward Handley as is embraced in direct interrogatories and the respective answers thereto from direct interrogatory 56 (folio 76) of his evidence down to and including direct interrogatory 77 and the answers thereto down to folio 86 for the following reasons: Because the matters inquired of in each of said interrogatories is immaterial, irrevalent, and does not relate to anything in issue in this cause.

And as a specific objection to direct interrogatory 56, because no proper foundation had been laid as to the loss of the letter in order to admit evidence as to its contents.

II.

Because so much of the testimony of George W. Trimble and answers thereto as is embraced in direct interrogatories 21 to
326 29, inclusive, and the respective answers thereto, found at folios 112 to 115, inclusive, should be expunged and suppressed, because the matters inquired of is irrevalent, immaterial, and does not relate to anything at issue in this cause.

III.

That so much of the testimony of Absalom V. Hunter as is embraced in direct interrogatories 46 to 51, inclusive, and the respective answers thereto, found in folios 170 to 176, inclusive, should be expunged and suppressed, because the matter inquired of is immaterial, irrevalent, and does not support any issue in this cause.

IV.

That so much of the testimony of Charles R. Bissell as is embraced in cross-interrogatories 1, 2, 3, 11, 13, 14, 15, 16, 17, 18 to 52, inc., 62, 67, 68, 69, 70 to 73, 84, 101 to 107, and the respective answers thereto, found in folios 236, 243, 244, 245, 247 to 265, 271, 273, 274, 275, 276, 282, 290, 291, 292, should be expunged and suppressed, because the matter inquired of is immaterial, irrevalent, does not support any issue in this cause, and is not proper evidence on cross-examination.

V.

That so much of the testimony of Charles Cavender as is embraced in cross-interrogatories 25 to 41, 45 to 50, 61 to 68, all inclusive, and 77, and the respective answers thereto, found in folio
——, should be expunged and suppressed, because the matter
327 inquired of is immaterial, irrevalent, does not support any issue in this cause, and is not proper evidence on cross-examination.

(Signed) J. Q. CHARLES,
ROCKWELL & BISSELL,
Att'ys for Bissell.

Endorsed: 247. In the circuit court U. S. S. H. Foss *et al. vs.* Chas. R. Bissell *et al.* Exceptions to the master's report. (Signed) Edward F. Bishop, clerk. J. Q. Charles and Rockwell & Bissell, att'ys-at-law.

And afterwards, and on, to wit, the 6th day of July, A. D. 1880, came the said defendant, Charles R. Bissell, by L. C. Rockwell, Esq., his solicitor, and filed in said court and in said cause a certain stipulation as to the testimony of Cavender, and as to the decree.

And said stipulation is in words and figures as follows, to wit:

Stipulation as to Testimony of Cavender, &c.

UNITED STATES OF AMERICA, } ss:
State of Colorado, }

In the United States Circuit Court.

328 FIRST NATIONAL BANK OF DENVER
vs.
SIMON H. FOSS, ABSALOM V. HUNTER, and CHARLES R. BISSELL. } Cross-Bill.

It is agreed that the evidence of Charles Cavander may be taken when the case is ready to be submitted to the court, and — C. R. Bissell returns from Colorado Springs he may be examined on a point omitted when on the stand on the 11th inst.

(Signed) D. P. DYER,
Att'y for Foss & Hunter.
(Signed) L. C. ROCKWELL,
Att'y for Bissell & Bank.

In the above cause it is stipulated that the decision of the court shall have the effect to determine the rights of the respective parties not only to the amount claimed in the original petition, but to the whole amount in the registry of the court.

(Signed) D. P. DYER,
Att'y for Foss and Hunter.
(Signed) L. C. ROCKWELL,
Att'y for Bissell and the First Nat. Bank.

329 Endorsed: 247. First Nat. Bank *vs.* Simon H. Foss, A. V. Hunter, & Charles R. Bissell. Stipulation as to testimony of Cavender and as to the decree of the court. Filed Jul. 6, 1880. (Signed) Edward F. Bishop, clerk.

And afterwards, and on, to wit, the 6th day of July, A. D. 1880, the same being one of the regular juridical days of the May term, A. D. 1880, of said court—present, the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Deposit in Registry of $5,500.00.

SIMON H. FOSS and ABSALOM V. HUNTER
vs.
FIRST NATIONAL BANK OF DENVER, COLORADO, and CHARLES R. BISSELL. } 247. In Chancery. To enforce agreement.

FIRST NATIONAL BANK OF DENVER
vs.
SIMON H. FOSS *et al.* } Cross-Bill.

330 At this day comes J. W. Webster, master, and deposits in the registry of the court and in the above-entitled cause five thousand five hundred dollars ($5,500.00).

And afterwards, and on the same day, to wit, the 6th day of July, A. D. 1880, the same being one of the regular juridical days of the May term, A. D. 1880, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Decree.

SIMON H. FOSS and ABSALOM V. HUNTER *vs.* THE FIRST NATIONAL BANK OF DENVER, COLORADO, and CHARLES R. BISSELL.	247. In Chancery. To enforce a written agreement.
THE FIRST NATIONAL BANK OF DENVER *vs.* SIMON H. FOSS, ABSALOM V. HUNTER, and CHARLES R. BISSELL.	Cross-Bill in the nature of a Bill of Interpleader.

This cause having come on to be heard upon the bill of complaint herein, and the answers thereto of the said Charles R. Bissell and The First National Bank of Denver, defendants, and the replications of the complainants to the said answers, and also
331 cross-bill herein of The First National Bank of Denver, and the separate answers of Charles R. Bissell and Simon H. Foss and Absalom V. Hunter, defendants, and the proofs, documentary and written, taken and filed in said cause, together with the stipulations and agreements of said parties filed herein on the 2d day of August, A. D. 1879, and the 6th day of July, A. D. 1880, respectively, and having been argued by counsel for the respective parties, and the court having found that the said Simon H. Foss and Absalom V. Hunter are entitled to the money in controversy in this suit, and the court having further found that there is with the clerk of this court as register of this court the sum — eight thousand nine hundred and fifty-four dollars and thirty-five cents ($8,954.35), paid to him by the First National Bank of Denver, and the sum of twenty-seven thousand five hundred dollars ($27,500.00), paid to him, said register, by L. C. Rockwell, solicitor for said Charles R. Bissell, and the further sum of five thousand five hundred dollars ($5,500.00), paid to said register by said Charles R. Bissell. [Red ink lines drawn around this, as per stipulation.] All of which said sums of money were by the stipulations and agreements aforesaid to abide the decision of this suit:

Now, therefore, on consideration thereof, it is ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and
332 decree, as follows, to wit:

That the said sum of eight thousand nine hundred and fifty-four dollars and thirty-five cents ($8,954.35) be paid, and the register of this court is hereby directed to pay the same to said Simon H. Foss and Absalom V. Hunter; and the sum of twenty-seven thousand five hundred dollars ($27,500.00), and the further sum of five thousand five hundred dollars ($5,500.00) be paid, and the register of this court is hereby directed to pay the same to said Simon H. Foss and Absalom V. Hunter.

Lines drawn as per stipulation on file.

And it is hereby further ordered, adjudged, and decreed by the court that the said Charles R. Bissell pay all the costs accrued or to accrue under the original bill, and that the said Charles R. Bissell pay all the costs incurred on his behalf under the cross-bill and one-half of the costs of the complainant under said cross-bill; and that the said Simon H. Foss and Absalom V. Hunter pay all the costs incurred on their *on their* behalf under said cross-bill, and one-half of the costs of the complainant under said cross-bill, and that execution issue for the said costs, according to the said judgment and decree.

333 And afterwards, and on, to wit, the 24th day of August, A. D. 1880, came the said defendants, Charles R. Bissell and The First National Bank of Denver, by L. C. Rockwell, Esq., their solicitor, and filed in said court and in said cause a certain stipulation, amending the decree heretofore entered herein.

And said stipulation is in words and figures as follows, to wit:

Stipulation Amending Decree.

UNITED STATES OF AMERICA, *State of Colorado:*

In the United States Circuit Court, District of Colorado.

SIMON H FOSS and ABSALOM V. HUNTER, Compl'ts, *vs.* FIRST NATIONAL BANK OF DENVER and CHARLES R. BISSELL, Def'ts.	Original Bill.
FIRST NATIONAL BANK OF DENVER, Compl't, *vs.* SIMON H. FOSS, ABSALOM V. HUNTER, and CHARLES R. BISSELL, Def'ts.	Cross-Bill.

334 Whereas in entering the decree in this cause the sum of five thousand five hundred dollars ($5,500) was embraced and included in the same by mistake, and the decree refers to that sum on the 2d page thereof in these words:

"And the further sum of five thousand five hundred dollars paid to said register by said Charles R. Bissell."

And said sum is again referred to on the 3d page of said decree in these words:

"And the further sum of five thousand five hundred dollars be paid, and the register of this court is hereby directed to pay the same to said Simon H. Foss and Absalom V. Hunter."

And being desirous of having said decree corrected and that sum deducted therefrom without prejudice to any of the proceedings had in this cause and without prejudice to any of the parties or any person interested in this decree:

It is agreed and stipulated—

1st. That any judge or justice of this court may, and they are hereby requested to, order the clerk of this court to expunge and strike from the decree by drawing lines in red ink around and over

so much of said decree as refers to this said sum of five thousand five hundred dollars on pages 2 and 3 thereof in the language above quoted in this stipulation.

2d. That in case an exemplified copy of the record in this
335 cause is sent to the Supreme Court United States, the decree shall be deemed and held full and complete, and the clerk of this court may so certify with that part of the decree stricken out.

3d. That the amount of the decree in this cause shall hereafter be taken and held by the parties, their privies, and any courts or judge of this court, to be thirty-six thousand four hundred fifty-four $\frac{35}{100}$ dollars, anything in the record in this cause or in the appeal bond to the contrary.

4th. That any judge or justice of this court shall sign an order directing the register of this court to pay to L. C. Rockwell, solicitor for Charles R. Bissell, the said sum of five thousand five hundred ($5,500) dollars out of the funds in the registry of this court in this action.

5th. That the clerk shall file this stipulation among the papers in this cause.

(Signed) W. S. DECKER,
Att'y for Simon H. Foss and Absalom V. Hunter.

(Signed) L. C. ROCKWELL,
Att'y for First Nat. Bank and Chas. R. Bissell.

Endorsed: No. 247. Circuit court. Foss and Hunter *vs.* First Nat. Bank and Chas. R. Bissell. First Nat. Bank *vs.* Foss, Hunter, & Bissell. Stipulation amending decree. Approved, and the clerk will correct the decree in accordance with this stipulation. (Signed) Geo. W. McCrary, circuit judge. Keokuk, Aug. 20, 1880. Filed Aug. 24, 1880. (Signed) Edward F. Bishop, clerk.

336 & 337 And afterwards, and on the same day, to wit, the 24th day of August, A. D. 1880, the same being a day in vacation, preceding the October term, A. D. 1880, of said court, at chambers, before the Honorable George W. McCrary, circuit judge, the following order was had and entered of record in said cause, to wit:

Order to Pay $5,500.00 to Bissell.

SIMON H. FOSS and ABSALOM V. HUNTER
vs.
THE FIRST NATIONAL BANK OF DENVER and CHARLES R. BISSELL. } In Chancery. Original Bill.

THE FIRST NATIONAL BANK OF DENVER
vs.
SIMON H. FOSS, ABSALOM V. HUNTER, and CHARLES R. BISSELL. } Cross-Bill.

The register of this court will draw his order in favor of L. C. Rockwell, solicitor for Charles R. Bissell, for the sum of $5,500.00 (five thousand five hundred dollars) on the fund and money de-

posited in the registry of this court in the above entitled action, and this shall be your warrant for so doing.

338 And thereupon, and on, to wit, the 9th day of June, A. D. 1879, came The First National Bank, of Denver, Colorado, by J. Q. Charles, Esq., its solicitor, and filed in said court and in said cause its certain cross-bill of complaint and sued out of said court a writ of subpœna in chancery against Simon H. Foss, Absalom V. Hunter, and Charles R. Bissell. And the said cross-bill is in words and figures as follows, to wit:

Cross-Bill.

UNITED STATES OF AMERICA, *District of Colorado:*

In the Circuit Court of the United States for the District of Colorado, in the Northern Division thereof. May Term, A. D. 1879.

THE FIRST NATIONAL BANK OF DENVER, Complainant,
vs.
SIMON A. FOSS, ABSALOM V. HUNTER, and CHARLES R. BISSELL, Defendants. } Cross-Bill.

To the honorable the justices of the circuit court of the United States for the district of Colorado, within and for the northern division thereof:

The bill of complaint of the First National Bank of Denver against Simon H. Foss, Absalom V. Hunter, and Charles R. Bissell, defendants. Humbly complaining, your orator shows unto your honors that it is a national bank, organized and existing
339 under the national banking act approved June 3d, A. D. 1864, and the bill supplemental thereto and amendatory thereof, doing business at the city of Denver, in the county of Arapahoe, and State of Colorado.

That on the twenty-sixth day of April, A. D. 1879, Simon H. Foss and Absalom V. Hunter, as complainants, filed their bill of complaint against your orator and one Charles R. Bissell, in the circuit court of the United States for the district of Colorado, complaining that on the sixteenth day of November, A. D. 1878, Horace A. W. Tabor, Jerome B. Chaffee, Charles R. Bissell, Simon H. Foss, and Absalom V. Hunter were the owners of certain mines, mining property, and premises, situate in the county of Lake, and State of Colorado; that said Bissell, Foss, and Hunter owned the lode called the Winnemuck and an undivid-- half of the New Discovery lode, and said Tabor and Chaffee were the owners in their own right of the Little Pittsburg lode, the Dives lode, and the undivided one-half of the New Discovery lode; and upon the date last aforesaid they made, executed, acknowledged, and delivered a certain agreement whereby the said properties were consolidated and worked under the name of the Little Pittsburg Consolidated Mining Company, and that said properties were by the respective owners conveyed by good and sufficient instruments in writ-

ing to Bela M. Hughes as the trustee of said parties; that
340 the proceeds over and above the expense of working said mine should be deposited in the First National Bank of Denver on the first day of each and every month, and such money to be divided and credited upon the books of said bank as follows, to wit: Seventy-one hundredth parts thereof shall be placed to the credit of above-named Tabor and Chaffee, and twenty-seven hundredths parts thereof, or the balance, to be credited to the above-named Bissell, Foss, and Hunter, and be subject to check as agreed upon between the said Bissell, Foss, and Hunter. That in case of any disagreement between the above parties in regard to the manner of working or as to the management of said mining property such difference or disagreement shall be submitted to said Hughes, trustee as aforesaid, or to his successor in trust, for his determination, the decision of whom, as regards such dispute, should be final. That in pursuance of said agreement there was deposited from time to time in your orator's bank, previous to the 26th day of April, A. D. 1879, the sum of ninety-two thousand five hundred and one dollars and fifty-eight cents, which money belonged to said Bissell, Foss, and Hunter. That according to the allegations of said bill Foss and Hunter claim to own nine-twelfths of said sum, and Bissell three-twelfths thereof. That said Bissell, in falsely pre-
341 tending to own four-twelfths of said sum in his own right, and as agent of one C. J. Reynolds' three-twelfths of said sum, that upon the eighth day of January, A. D. 1879, said Bissell forbid your orator paying any part or portion of the said sum of money so deposited as aforesaid with it to the joint credit of said Hunter, Bissell, and Foss as their proportion of the profits derived from the working of the Little Pittsburg Consolidated Mining Company, without the joint signatures of said Bissell, Foss, and Hunter to the check or draft therefor. That said Bissell claims seven-twelfths of said money, four-twelfths being in his own right, and three-twelfths as the agent of said C. J. Reynolds. That upon the sixth day of March, A. D. 1879, said Foss and Hunter demanded of your orator the payment of nine-twelfths of said sum, the proceeds of the working of said Little Pittsburg Consolidated Mining Company, and that said C. J. Reynolds had no interest in said property, and was not entitled to the proceeds thereof, and that said Bissell intended to injure and defraud said Foss, and Hunter refused to join with said Foss and Hunter in making any check or order upon your orator for the money so as aforesaid deposited in its said bank, but had forbidden your orator paying any part thereof to said Foss and
342 Hunter, and that your orator had willfully and wrongfully refused to pay to said Foss and Hunter any part or portion of said money so deposited in its said bank, wherefore said Foss and Hunter pray that your orator and the said Bissell be required to show cause why the complainants should not have such relief as prayed for in said bill, and that said Bissell be required to show by what title he claims seven-twelfths of the funds aforesaid, and especially that he be required to show why said Foss and Hunter shall not have any part of said funds, and why he had forbidden your

orator to pay any part of said funds to them, and that upon a full and final hearing of the bill of complaint the right, title, and interest of your orator, and the right, title, and interest of the said Bissell may be ascertained and determined, and that a decree may be made and judgment entered against your orator for the payment of such an amount to said Foss and Hunter as might be found to be due to them, and for such further judgments, orders, and reliefs in the premises as the nature and circumstances of this case might require.

That your orator and said Bissell have entered their appearance in said cause, but no pleadings have been put in on behalf of either of them.

343 Your orator further represents and show unto the court that previous to the twenty-sixth day of April, A. D. 1879, there had been deposited in its bank to the credit of said Bissell, Foss, and Hunter the sum of ninety-two thousand five hundred and one dollars and fifty-eight cents, as proceeds of the said Little Pittsburg Consolidated Mining Company, which sum of money belonged to said Bissell, Foss, and Hunter, but that said Bissell had forbidden your orators paying any part or portion of said money over to said Foss and Hunter, or to the order of either of them; that upon the said twenty-sixth day of April, A. D. 1879, said Bissell, Foss, and Hunter united in two joint checks or drafts upon your orator's bank, in and by which drafts and checks they checked out the sum of $61,667.72, part and portion of the said sum of ninety-two thousand five hundred and one dollars and fifty-eight cents; that afterwards, and on or about the sixth day of May, A. D. 1879, they united in another check or draft whereby the sum of $26,863.08, part and parcel of said ninety-two thousand five hundred and one dollars and fifty-eight cents, was checked out of your orator's bank, leaving therein the sum of seven thousand seven hundred and eight dollars and forty-six cents, the residue of said $92,501.58. That on or about the third day of May, A. D. 1879, there was deposited in your orator's bank, to the joint credit of said Bissell, Foss, and

344 Hunter, the sum of fourteen thousand nine hundred and fifty $\frac{71}{100}$ dollars. And that afterwards, and on or about the twenty-fourth day of May, A. D. 1879, said Bissell, Foss, and Hunter united in joint checks or orders and drew from said bank the sum of $9,967.13, leaving the sum of four thousand nine hundred and eighty-three $\frac{58}{100}$ dollars still remaining therein, and that the same is now in the bank of your orator, which sum your orator is informed and believes is in dispute between the said Bissell on the one side and the said Foss and Hunter upon the other; that each party claim the right to own said sum of money last above stated; that your orator claims no right, title, or interest in or to the same, but is merely holding it as a depositary or stakeholder, and does not know to which of the claimants he ought of right to render and pay the same.

And your orator further represents and shows to the court that it is under no liability to either said Foss and Hunter or said Bissell beyond that which arises to the title to the money so deposited in its bank. Said Bissell on the one hand, and said Foss and Hunter

on the other, demand that your orator should pay such money to them, but they refuse to join in a joint check or order in checking the same out. That your orator has doubts as to which
345 & 346 of such parties really own said money, and that it cannot safely pay or render it to the one party without being made liable for the same debt to the other; that said Bissell, Foss, and Hunter are adults, and persons capable of receiving such money; that it should be paid to either one party or the other.

Your orator further represents and shows to the court that this bill is not filed at the request of either said Bissell, Foss, or Hunter, or collusively with either of said persons, but is exhibited solely on the part of the bank that said Bissell, Foss, and Hunter respectively may come in and interplead and show by what right they claim said money, and which of the parties have the better right thereto.

To the end that your orator may have the relief hereby demanded it makes said Charles R. Bissell, Simon H. Foss, and Absalom V. Hunter parties defendant to this bill of complaint, and asks that a chancery subpœna may issue out of and under the seal of this honorable court, addressed and directed to said Charles R. Bissell, Simon H. Foss, and Absalom V. Hunter, commanding them, and each of them, to be and appear before this honorable court on the first day of the next term thereof, to answer all and
347 singular the allegations in this your orator's bill of complaint contained, and that as fully as though here again particularly interrogated thereto.

And your orator prays that said defendants may be decreed to interplead and settle or adjust between themselves their right or claim in or to the money so as aforesaid now in said bank, your orator being ready and willing and hereby offering to pay the same to such of said defendants as this honorable court shall direct.

And your orator asks this honorable court that the bill of complaint filed by said Foss and Hunter above mentioned and this your orator's cross-bill be heard and decided at one and the same time by this honorable court. And your orator will ever pray, &c.

(Signed) FIRST NATIONAL BANK OF DENVER,
By GEORGE W. KASSLER,
Ass't Cas.

J. Q. CHARLES,
Solicitor for the 1st Nat. Bank.

UNITED STATES OF AMERICA, }
State of Colorado, County of Arapahoe, } *ss:*

George W. Kassler, of lawful age, being duly sworn according to law, on his oath says: That he is assistant cashier of the First National Bank of Denver, the complainant herein; that he has
348 heard the foregoing bill of complaint read and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true; that he is more familiar with the facts stated in the foregoing bill of complaint than

any other officer of said corporation, and that this verification is made for and on behalf of said corporation.

(Signed) GEORGE W. KASSLER.

Sworn to and subscribed before me at Denver, this seventh day of June, A. D. 1879.

[SEAL.] (Signed) WILLIAM H. SALISBURY,
Notary Public.

[Endorsed:] No. 247. Cross-bill. United States circuit court, district of Colorado. May term, 1879. The First National Bank of Denver, compl't, *vs.* Simon H. Foss *et al.*, def'ts. Cross-bill in the nature of a bill of interpleader. Filed June 9, 1879. (S'd) Edward F. Bishop, clerk. J. Q. Charles, sol. for First Nat. B'k.

And the said subpœna is in words and figures as follows, to wit:

Subpœna on Cross-Bill.

349 THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, } *ss:*
District of Colorado, }

The President of the United States of America to Charles R. Bissell, Simon F. Foss, and Absalom V. Hunter, Greeting:

You and every of you are hereby commanded that you appear before the judges of the circuit court of the United States of America for the district of Colorado, at the city of Denver, in said district, on the first Monday in July next (it being the 7th day of July, A. D. 1879), to answer the cross-bill of complaint of The First National Bank of Denver this day filed in the office of the clerk of said court, in said city of Denver, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said bill of complaint, upon pain of judgment being pronounced against you by default, and a decree had and entered accordingly.

To the marshal of the district of Colorado to execute and make due return.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, and the seal of the said circuit court for the district of Colorado, at the city of Denver aforesaid, this ninth day of June, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United State the 103d year.

[SEAL.] (Signed) EDWARD F. BISHOP, *Clerk.*

Memorandum.

The above-named defendants are hereby notified that unless they and each of them shall enter their appearance in the office of the clerk of said court, at the city of Denver aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

(Signed) EDWARD F. BISHOP, *Clerk.*

350 *Marshal's Return.*

DISTRICT OF COLORADO, *ss:*

COLORADO SPRINGS, COL., *June* 12, *A. D.* 1879.

I have duly executed the within writ, by personally delivering a true copy of the within to Absalom V. Hunter, one of the within-named defendants, at Colorado Springs, El Paso county, State and district of Colorado, this 12th day of June, A. D. 1879. Charles R. Bissell not found in my district.

(S'g'd) P. P. WILCOX, *Marshal,*
By L. C. DANA,
Deputy Marshal.

UNITED STATES OF AMERICA, *Northern Division of the District of Colorado,* } *ss:*

LEADVILLE, COLO., *June* 16, *A. D.* 1879.

I have duly executed the attached writ by personally delivering a true copy thereof to Simon H. Foss, one of the within-named defendants, at Leadville, Lake county, State and district of Colorado, this — day of June, A. D. 1879. Charles R. Bissell not found in my district.

——— ———, *U. S. Marshal,*
By J. T. ROBERTS, *Deputy.*

[Endorsed:] Cross-bill. Gen. No. 247. Circuit court of the United States for the district of Colorado. In chancery. The First National Bank of Denver *vs.* Simon H. Foss *et al.* Subpœna on cross-bill. Returnable to rule day, first Monday in July, A. D. 1879. (S'd) Edward F. Bishop, clerk. Filed this 7th day of July, A. D. 1879. (S'd) Edward F. Bishop, clerk, by F. W. Tupper, deputy clerk. J. Q. Charles, of complt's sol'r.

351 And afterwards, and on, to wit, the 5th day of July, A. D. 1879, came the said defendant, Charles R. Bissell, by L. C. Rockwell, Esq., his solicitor, and filed in said court and in said cause his answer to the cross-bill of complaint heretofore filed herein. And the said answer is in words and figures as follows, to wit:

Answer to Cross-Bill.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States for the District of Colorado, Northern Division thereof. To the June Term, A. D. 1879.

THE FIRST NATIONAL BANK OF DENVER, Complainant,
vs.
SIMON H. FOSS, ABSALOM V. HUNTER, and CHARLES R. BISSELL, Defendants.

The separate answer of Charles R. Bissell, defendant, to the cross-bill of The First National Bank of Denver, complainant, against Simon H. Foss, Absalom V. Hunter, and Charles R. Bissell, defendants.

This defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception which may or can be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained,
352 for answer thereto or unto so much and such parts thereof as this defendant is advised it is or are material or necessary for him to make answer unto, answering, says:

1. He admits that the complainant is a national bank located and doing business in the city of Denver, and organized under the national banking act, approved June 3d, 1864, and the bills supplemental thereto and amendatory thereof; he also admits that Simon H. Foss and Absalom V. Hunter, his co-defendants herein, on the twenty-sixth day of April last filed their bill of complaint against this defendant and the First National Bank of Denver in the circuit court of the United States for the district of Colorado, which bill of complaint so filed contained substantially the same averments and allegations as in said cross-bill in that behalf is alleged. He also admits that said bank entered its appearance in said cause, and filed an answer thereto, as in said cross-bill is alleged; he also admits that his appearance has been entered in said cause, but no pleadings had been put in on his behalf.

2. This defendant, further answering, says he admits that previous to the twenty-sixth day of April, A. D. 1879, there had been deposited in said bank, to the joint credit of this defendant and said Foss and Hunter, the sum of ninety-two thousand five hundred and
353 one dollars and fifty-eight cents as proceeds of the said Little Pittsburg Consolidated Mining Company, which sum of money belonged to the last-named parties. He also admits that he had forbidden said bank to pay to said Foss and Hunter any part or portion of said money over to them or to the order of either of them without his joining in a check or draft upon said fund. He also admits that upon the twenty-sixth day of April, A. D. 1879, this defendant and said Foss and Hunter united in two joint checks or drafts upon said bank, the name of this defendant being signed

to said drafts or checks, by L. C. Rockwell, who was duly authorized and empowered by this defendant so to do, in and by which said drafts or checks they took out of said fund the sum of sixty-one thousand six hundred and sixty-seven dollars and seventy-two cents, part and portion of the said ninety-two thousand five hundred and one dollars and fifty-eight cents; that afterwards and on or about the 26th day of May, A. D. 1879, they united in another check or draft upon said bank, whereby the sum of twenty-six thousand eight hundred and sixty-three dollars and eight cents, part and parcel of said ninety-two thousand five hundred and one dollars and fifty-eight cents, was checked out of said bank, leaving therein the sum of seven thousand seven hundred and eighty dollars and forty-six cents, the residue of said ninety-two thousand five hun-
354 dred and one dollars and fifty-eight cents. This defendant also admits that on or about the third day of May, A. D. 1879, there was deposited in said bank to the joint credit of this defendant and said Foss and Hunter the further sum of fourteen thousand nine hundred and fifty dollars and seventy-one cents, being a portion of the net profits and proceeds from the joint working of said consolidated property, and that afterwards, and on or about the twenty-fourth day of May, A. D. 1879, this defendant and said Foss and Hunter again united in a joint check or draft, and drew from said bank the sum of nine thousand nine hundred and sixty-seven dollars and thirteen cents, leaving the sum of four thousand nine hundred and eighty-three dollars and fifty-eight cents still remaining therein; that the sum of eight thousand nine hundred and fifty-four dollars and twenty-seven cents, or very nearly that sum, is still in said bank, and in dispute between this defendant on the one side and said Foss and Hunter upon the other; and this defendant admits the last-mentioned sum is claimed by him in his own right, and that said Foss and Hunter claim the same, and that said bank has no right, title, or interest therein, save and excepting as a stockholder or depositee thereof; neither does said bank know to which party said money rightfully belongs.

3. This defendant, further answering, says he admits that
355 said bank is under no liability to him or to said Foss and Hunter other than that which is created by it holding this money. This defendant also admits that said bank cannot safely pay or surrender that money to either said Foss and Hunter upon the one side and this defendant upon the other, without rendering itself liable to be sued by the other party therefor. This defendant also admits that he, as well as said Foss and Hunter, are capable of receiving such money.

4. This defendant, further answering, says said cross-bill is not filed in collusion with him by said bank.

5. This defendant further answering and setting up his claim to the said money, says that on or about the fifteenth day of April, A. D. 1878, he and said Foss and Hunter purchased an undivided three-fourths interest in and to the Winnemuck lode of and from George Davidson and William H. Von Boxall. That after said purchase said Davidson, Von Boxall, Foss, Hunter, and this defendant

worked and mined said Winnemuck lode, as joint owners thereto, until the twenty-seventh day of July, 1878, at which time said Davidson and Von Boxall sold and conveyed all their right, title, and interest in and to said Winnemuck lode, which was one undivided one-fourth, over to Edward H. Handley, Amos R. Rawlings, and George W. Roberston, and gave them a deed therefor, which was subsequent to its date recorded in the office of the clerk
356 and recorder for Lake county, Colorado; that after this last purchase said Foss, Hunter, this defendant, Handley, Rawlings, and Robertson continued to work said Winnemuck mine as joint owners thereof, until the first day of October, 1878, at which time said Foss, Hunter, and this defendant purchased (as hereinafter stated) of and from said Handley, Rawlings, and Robertson all their right, title, and interest in and to said Winnemuck mine, which was an undivided one-fourth part thereof, for the sum of fifteen thousand dollars, but the deed from the last-named parties was wrongfully given to and taken by said Simon H. Foss for said Hunter and this defendant, as hereinafter stated. That in their said purchase, through the efforts of this defendant, the price at which said Handley, Rawlins, and Robertson sold their undivided one-fourth interest in said Winnemuck lode was reduced from thirty to fifteen thousand dollars. That after said purchase said Foss and Hunter and this defendant continued to work and mine said Winnemuck lode, as joint owners thereof, until the sixteenth day of November, 1878, when their interest in said Winnemuck lode was consolidated with their interest in the New Discovery lode, and with the interests of Jerome B. Chaffee and Horace A. W. Tabor, in the Little Pittsburg, Dives, and New Discovery lodes. That after said Foss had taken this conveyance
357 from said Handley, Rawlings, and Robertson to himself for their one undivided one-fourth interest in and to said Winnemuck lode, to wrong and defraud this defendant out of his just interest in and to said one-fourth interest, which was an undivided one-twelfth thereof, said Foss and Hunter, combining and confederating with one George W. Trimble (who claims to have some interest in the money which is the subject-matter of this suit), began wrongfully to claim to him, and pretend he had no right, title, or interest in or to this undivided one-fourth so as aforesaid purchased from said Handley, Rawlins, and Robertson. This defendant further shows that said Foss wrongfully, artfully, and deceitfully took advantage of the reduction of said price from thirty to fifteen thousand dollars, and combined, confederated, and so contrived with said Hunter and Trimble that said Hunter should ostensibly and to the world likewise appear to sell his interest to said Foss for the same sum in proportion as said Handley, Rawlings, and Robertson were selling for, and he, said Hunter, joined in making their deed to said Foss, but as a matter of fact it was understood and agreed before said Hunter joined in the making of said deed between himself,
358 said Foss, and Hunter that he, Hunter, was not to lose his right, title, and interest in or to said lode, or in any part or portion thereof, but just as soon as said title passed from said Handley, Rawlins, and Robertson to said Foss that he, said Foss, should

reco-vey back to said Hunter his right, title, and interest in and to said premises, which he subsequently did do in pursuance with said agreement. That when this defendant was negotiating for said premises he was acting in good faith for the benefit of said Foss, Hunter, and himself jointly. That to take advantage of this reduction in price of fifteen thousand dollars, and to keep this defendant in ignorance of their schemes, said Foss and Hunter induced said Handley, Rawlins, and Robertson to go from Leadville, where they lived and all parties resided, to Colorado Springs, and, as this defendant is informed and believes, and so charges the fact to be, did pay or attempt to pay this fifteen thousand dollars, being the purchase price of said property, to said Handley, Rawlings, and Robertson, at the last-named place, to keep this defendant in ignorance of what was taking place between them. But this defendant further avers that at this time said Foss, Hunter, this defendant, Rawlings, Handley, and Robertson had and kept the proceeds derived from working said Winnemuck mine in the Miners' Exchange Bank of Leadville to a joint account, and there was sufficient money,
359 as this defendant is informed (by said Trimble, who was then, and still is, the cashier of said bank) and believes, in said bank, which then rightfully belonged to said Handley, Rawlings, and Robertson as their due proportion, after paying all just debts for working and operating said mine, to pay for their said one-fourth interest, to within three thousand dollars or thereabouts.

That this defendant had also at the time in said bank a private account, to the credit of which there was enough money to pay for his due proportion of this deficit of three thousand dollars. But to make it appear that the purchase was made by said Foss individually the matter was attempted to be closed at Colorado Springs; but, as affiant is informed and believes, it was always understood by and between said Foss, Hunter, and Trimble that the money so deposited to the joint account of said Foss, Hunter, Rawlings, Robertson, Handley, and this defendant in said bank, as the proceeds from the Winnemuck lode, should be and was really applied to purchase their said interest. That this defendant learned from said Rawlings, on the evening of the first day of October last, and previous to the paying the money over to said parties by said Foss (if the same was paid at Colorado Springs), that the contract for the purchase had been made, and defendant then told said Foss he was ready and
360 willing to pay his proportion of said fifteen thousand dollars and should insist on his proportion of the property, being one undivided twelfth thereof; whereupon said Foss said he would see about it; that ever since then this defendant has been willing to pay, and still is willing to pay, said Foss his due proportion of said fifteen thousand dollars, with interest thereon at ten per cent. per annum from October 1st, 1878, until this time. This defendant further says that said Foss, just previous to this defendant's efforts to aid in the purchase of their interest, urged defendant to aid him (Foss) to raise the thirty thousand dollars and purchase this property for said Hunter himself, and this defendant at the same time saying a large amount of the sum was then in the bank and could

be used for that purpose. That this defendant then represented to said Foss this one-fourth interest could be purchased for a much less sum; and by and through the efforts of this defendant, with said Handley, Rawlings, and Robertson, the price was reduced to fifteen thousand dollars. That ever since said Foss took said deed, on October 1st, 1878, for their interest, up to the time of their consolidation, he held the undivided twelfth part of this one-fourth interest as trustee for this defendant. That after this consolidation the said trustee, under the said deed, held such interest for the use and benefit of this defendant, and he is entitled to the one-
361 twelfth ($\frac{1}{12}$) of this twenty-seven one-hundredth ($\frac{27}{100}$) of the net proceeds of these consolidated properties in addition to the three-twelfths ($\frac{3}{12}$) thereof, as conceded to be his by said Foss and Hunter, which makes this defendant's interest therein four-twelfths ($\frac{4}{12}$) of said twenty-seven one-hundredths ($\frac{27}{100}$) of these consolidated properties. That from the first day of October, 1878, up to the eighteenth day of November of that year said Winnemuck lode produced a large sum of money, the exact amount of which defendant cannot state, as the books containing said statements are in the hands of said Foss, Hunter, and Trimble, or in the hands of one of them; but this defendant says the sum of money so received as the proceeds of said Winnemuck lode between the last-named dates was not less than fifty thousand dollars, the four-twelfths ($\frac{4}{12}$) of which net proceeds justly and properly belongs to this defendant; but said Foss and Hunter wrongfully claim this defendant has no right, title, or interest therein, save as to three-twelfths thereof, and that the other twelfth belongs to them.

6. This defendant, further answering, says said Handley, Rawlings, and Robertson were entitled to and owned one-fourth of all the money received by them, together with said Foss, Hunter, and this defendant, as the proceeds from working said Winnemuck lode;
362 that on said first day of October last there was not less than twelve thousand dollars in said Miners' Exchange Bank so belonging to said Handley, Rawlings, and Robertson, as this defendant is informed and believes; that at and before that time, owing to certain disputes which had sprung up between Horace A. W. Tabor, August Riche, and George H. Hook on the one side, and said Foss, Hunter, this defendant, Handley, Rawlings, and Robertson on the other side regarding the ownership of the ore and mineral taken from said Winnemuck mine, all the ore and mineral mined and taken therefrom by the last-named parties was attached by said Tabor, Riche, and Hook, and the former-named parties gave bond and had the same released. And inasmuch as said Foss, Hunter, and this defendant had to find and give all security in the bonds for releasing such ore, and run all the risks of becoming liable on said bond, as this defendant is informed and believes, and so charges the fact to be, all the money in said bank at the time of said purchase by Foss belonging to said Handley, Rawlings, and Robertson from the workings of said mine was, in consideration of said fifteen thousand dollars, to belong to and become the money of said Foss, Hunter, and this defendant, and said Handley, Rawlings, and Robertson

then and there relinquished all their right, title, and interest therein.

7. This defendant, further answering, says he never drew
363 from said bank, neither did he receive any benefit from, any of the money derived from this one-fourth interest so as aforesaid owned by said Rawlings, Handley, and Robertson, but that said Foss and Hunter and said Trimble have taken all of said money and wrongfully appropriated and converted the same to their own use and benefit, which amounts so taken and appropriated exceed by far the fifteen thousand dollars so as aforesaid paid to said Handley, Rawlings, and Robertson for their interest in and to said Winnemuck lode, the one-third part of which justly and of right is and was the money of this defendant. Wherefore defendant asks—

First. That he be decreed to have been the owner of the undivided one-third of the undivided one-fourth part of the interest so as aforesaid pretended to have been purchased by said Foss from said Handley, Rawlings, and Robertson, and that one-third of all the money received as net proceeds from their said one-fourth interest be decreed to belong to and be the money of this defendant.

Second. That said bank be ordered and directed to pay said money over to this defendant, and he be adjudged the legal owner thereof.

Third. That said Foss be adjudged to have been the trustee of this defendant, so far as the said undivided third part of said one-fourth part of said Winnemuck lode is concerned, and that under the terms of said purchase said Foss was but the trustee of
364 this defendant as to said interest, and that all the money theretofore or thereafter deposited in the said Miners' Exchange Bank of Leadville in the common fund to the credit of said Foss, Hunter, Handley, Rawlings, Robertson, and this defendant, or to the credit of that account under whatever name or style the same was kept in said bank, and at previous to the day of said purchase by Foss, and from that time onward; that the undivided one-third of the one-fourth part thereof be adjudged and decreed to belong to, and be the property of, this defendant, and that such money, or so much thereof as may be necessary, be taken and applied on a payment by this defendant to said Foss and his co-conspirators therein on the purchase of said one-twelfth part of the fourth of said interest of said Handley, Rawlings, and Robertson, which they attempted to sell and convey to said Foss in October last.

Fourth. That this defendant may have such other and such further relief in the premises as may be agreeable to equity and good conscience.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged without this, that there is any other matter, cause, or thing in the complainant's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and
365 avoided, or denied is true, to the knowledge or belief of this defendant; all which matters and things this defendant is

ready and willing to aver, maintain, and prove, as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) CHARLES R. BISSELL.

L. C. ROCKWELL, *Sol. for Def't.*

UNITED STATES OF AMERICA, }
State of Colorado, County of Arapahoe, } *ss:*

Charles R. Bissell, of lawful age, being first duly sworn, deposes and says: He is the above-named defendant; that he has heard the foregoing answer read and knows the contents thereof, and that the same is true of his own knowledge, except those matters and things therein stated on information and belief, and as to those he believes it to be true.

(S'g'd) CHARLES R. BISSELL.

Subscribed and sworn to before me, this June 26th, 1879.

[SEAL.] (S'g'd) JOHN W. WEBSTER,
Notary Public.

Endorsed: No. 247. Cross-bill. First Nat. Bank of Denver ag'st Charles R. Bissell & Absalom V. Hunter & Simon H. Foss. Ans. of Chas. R. Bissell to cross-bill. Filed Jul. 5, 1879. (S'd) Edward F. Bishop, clerk. L. C. Rockwell, sol. for Bissell.

366 And afterwards, and on, to wit, the 7th day of July, A. D. 1879, came the said defendants, Simon H. Foss and Absalom V. Hunter, by D. P. Dyer, Esq., their solicitor, and filed in said court and in said cause their answer to the cross-bill of complaint heretofore filed herein, and the said answer is in words and figures as follows, to wit:

Answer of Foss and Hunter to Cross-Bill.

UNITED STATES OF AMERICA, *District of Colorado:*

In the Circuit Court of the United States, District of Colorado.

THE FIRST NATIONAL BANK OF DENVER, Complainant,
vs.
SIMON H. FOSS *et al.*, Def'ts.

Defendants, Simon H. Foss & Absalom V. Hunter, for their joint and separate answer to the cross-bill filed herein by complainant, say they admit that the several amounts stated by complainant have been paid out by said bank at the times stated, and that the balances now remaining in said bank to the joint credit of Bissell and these defendants are correctly stated.

367 Defendants say that the whole amount of money now in said bank to the credit of said Bissell and these defendants belongs in whole to these defendants; that the said Bissell has received all that he is entitled to of the amount so deposited in said

bank, to wit, $\frac{3}{12}$ thereof. That of said sum so deposited to the credit of the said Bissell and these defendants $\frac{3}{12}$ thereof, and no more, belongs to the said Bissell, and the remaining $\frac{9}{12}$ belongs to these defendants, and for which amount, less the credits aforesaid, they pray judgment against said bank.

(Signed) D. P. DYER,
Solicitor for Def'ts.

Endorsed: 247. Cross-bill. The First National Bank, complainant, *vs.* Simon H. Foss *et al.*, def'ts. Answer of Foss & Hunter to cross-bill. Filed July 7, 1879. (S'd) Edward F. Bishop, clerk.

And afterwards, and on, to wit, the 2d day of August, A. D. 1879, there was filed in said court and in said cause a certain stipulation and agreement as to monies, and the said stipulation is in words and figures as follows, to wit:

Stipulation and Agreement as to Monies.

368 UNITED STATES OF AMERICA, } ss:
State of Colorado, }

In the Circuit Court of the United States for the District of Colorado.
To the June Term, A. D. 1879.

SIMON H. FOSS and ABSALOM V. HUNTER, Complainants,
vs.
FIRST NATIONAL BANK OF DENVER and CHARLES R. BISSELL, Defendants. } Original Cause.

FIRST NATIONAL BANK OF DENVER, Complainant,
vs.
CHARLES R. BISSELL, ABSALOM V. HUNTER, and SIMON H. FOSS, Defendants. } Cross-Bill.

Whereas, on the twenty-sixth day of April last past the above-named Foss and Hunter filed their bill of complaint against the above-named Charles R. Bissell and First National Bank of Denver, claiming to own and have a right to draw from said First National Bank of Denver a certain sum of money there deposited in the joint names of said Bissell, Foss, and Hunter, being the one-twelfth $(\frac{1}{12})$ part of the twenty-seven one hundredths $(\frac{27}{100})$ of the net profits from working the New Discovery mine and lode, the Winnemuck mine and lode, the Little Pittsburg mine and lode, and the Dives mine and lode, all situate in California Mining District, Lake county, Colorado;

369 Whereas said First National Bank of Denver has filed a cross-bill in said cause asking said Bissell, Foss, and Hunter to show cause and prove to the court their right and title to said money so as aforesaid deposited in said bank, amounting to eight thousand nine hundred & fifty-four and $\frac{35}{100}$ dollars, which suit is still pending and undetermined in this court; and whereas Lewis

C. Rockwell now holds twenty-seven thousand five hundred dollars as the trustee for said Bissell, Foss, and Hunter, which sum of money is also in dispute between said Bissell, Foss, and Hunter, said Bissell claiming to be the owner thereof on the one hand, and said Foss and Hunter likewise claiming to be the owners thereof upon the other hand:

It is mutually agreed by and between said Bissell, Foss, and Hunter that the said $8,954.35 *dollars*, now in said First National Bank of Denver, and the said twenty-seven thousand five hundred dollars now as aforesaid in the hands of said Lewis C. Rockwell, be deposited in the First National Bank of Denver to the credit of the register of this court, there to remain until the determination of the said suit now pending in this court of and concerning the said $8,954 35 *dollars* now in said bank, or until the further order of this court in relation thereto.

370 And it is further agreed by and between the parties aforesaid that his honor, Moses Hallett, judge of this court, may make an order to the effect that the whole of said money (both the sum now in said bank and said sum now in the hands of said Lewis C. Rockwell, trustee as aforesaid) shall be deposited in the First National Bank of Denver to the credit of the register of this court, there to remain until drawn out by check or checks certified by the judge of this court made in term time or at chambers, or until otherwise disposed of by some order of this court made in term time or at chambers, and that when said twenty-seven thousand five hundred dollars is so deposited said Rockwell shall be released and relieved of and from all further responsibility for and control over the same, and that said sum now held by said Rockwell as aforesaid and so to be deposited shall abide the decision of the court as to the money now in dispute between said parties in the above-entitled causes, and either party may and shall have a right to amend their respective pleadings, if they so desire, so as to include in said causes the said twenty-seven thousand five hundred dollars now as aforesaid held by said Rockwell.

It is further stipulated and agreed that no further claim or demand shall ever be made or set up by said Foss and Hunter, or either of them, against said Rockwell, trustee, for any interest

371 accruing on said sum of money while the same has been in his hands.

(Signed) D. P. DYER,
Att'y for Complainants.

(Signed) L. C. ROCKWELL,
Att'y for Chas. R. Bissell & First Nat. Bank of Denver.

Endorsed: No. 247. Cross-bill. Simon H. Foss and Absalom V. Hunter *vs.* First Nat. Bank of Denver. Chas. R. Bissell. Stipulation and agreement as to moneys. Filed Aug. 2, 1879. (S'd) Edward F. Bishop, clerk. Dyer.

And afterwards, and on the same day, to wit, the 2d day of Aug., A. D. 1879, the same being in vacation preceding the October term,

A. D. 1879, of court, at chambers, before the Honorable Moses Hallett, district judge, the following proceeding was had and entered of record in said court and in said cause, to wit:

Order: $36,454.35 Paid into the Registry.

372 SIMON H. FOSS and ABSALOM V. HUNTER *vs.* FIRST NATIONAL BANK OF DENVER, COLORADO, and CHARLES R. BISSELL. } In Chancery. Bill to enforce a written agreement.

THE FIRST NATIONAL BANK OF DENVER *vs.* SIMON H. FOSS *et al.* } Cross-Bill.

At this day comes L. C. Rockwell, Esq., trustee in the said cross-bill mentioned, and files herein a stipulation touching certain moneys, and pays into court eight thousand nine hundred and fifty-four dollars and thirty-five cents ($8,954.35), and twenty-seven thousand five hundred dollars ($27,500.00).

And afterwards, and on, to wit, the 15th day of June, A. D. 1881, came the said defendants in the cross-bill, by their solicitor aforesaid, and filed in said court and in said cause a certain motion to pay over money in registry. And the said motion is in words and figures as follows, to wit:

Motion to Pay Over Money in Registry.

UNITED STATES OF AMERICA, *District of Colorado:*

373 In the Circuit Court of the United States for said District. May Term, 1881.

SIMON H. FOSS and ABSALOM V. HUNTER, Complainants, *vs.* CHARLES R. BISSELL and THE FIRST NATIONAL BANK OF DENVER, Defendants. } Original Bill.

THE FIRST NATIONAL BANK OF DENVER, Complainant, *vs.* CHARLES R. BISSELL, SIMON H. FOSS, and ABSALOM V. HUNTER, Defendants. } Cross-Bill, in the nature of a Bill of Interpleader.

Now here at this day comes Simon H. Foss and Absalom V. Hunter, complainants in the above-mentioned original bill, and defendants in the above-named cross-bill, and moves the court for an order on the register of this court to pay to them, or their solicitor of record, the sum of thirty-six thousand four hundred and fifty-four and $\frac{35}{100}$ dollars, now in the registry of this court, and which was by this honorable court on the 6th day of July, A. D. 1880, adjudged to belong to them, the said Foss and the said Hunter, for the reason

that said judgment was not appealed from, and the time al-
374 lowed by law for an appeal has long since expired.
(Signed) D. P. DYER,
Solicitor for Simon H. Foss & Absalom V. Hunter.

Endorsed: 247. Cross-bill. Simon H. Foss & Absalom V. Hunter, complainants, *vs.* Charles R. Bissell *et al.*, defendants. The First National Bank of Denver, complainant, *vs.* Charles R. Bissell *et al.*, defendants. Filed June 15, 1881. (S'g'd) Edward F. Bishop, clerk. Motion for an order on register to pay over moneys in registry of court.

And afterwards, and on, to wit, the 17th day of June, A. D. 1881, the same being one of the regular juridical days of the May term, A. D. 1881, of said court, present, the Honorable Moses Hallett, district judge, the following proceeding was had and entered of record in said court and in said cause, to wit:

Order to Pay Over Money in Registry to Foss & Hunter.

SIMON H. FOSS and ABSALOM V. HUNTER *vs.* CHARLES R. BISSELL and THE FIRST NATIONAL BANK OF DENVER.	In Chancery. To enforce an agreement.
375 THE FIRST NATIONAL BANK OF DENVER *vs.* CHARLES R. BISSELL, SIMON H. FOSS, and ABSALOM V. HUNTER.	Cross-Bill in the nature of a Bill of Interpleader.

Now at this day the motion heretofore filed for an order on the register of this court to pay to Simon H. Foss and Absalom V. Hunter or their solicitor of record thirty-six thousand four hundred and fifty-four and $\frac{35}{100}$ dollars, now in the registry of said court, coming on to be heard, and after hearing and consideration of the same, and it being fully understood by the court, the same is by the court sustained.

It is therefore ordered, adjudged, and decreed by the court that the register of this court, in conformity with the rules of the court, pay over to the said Simon H. Foss and Absalom V. Hunter or their solicitor of record, D. P. Dyer, the said sum of thirty-six thousand four hundred and fifty-four and $\frac{35}{100}$ dollars, so as aforesaid in the registry of this court in the above-entitled cause.

And following said order, and upon the same paper, the following objection in writing appears, to wit:

Objection to Order.

376 The defendant, Charles R. Bissell, by his solicitor, L. C. Rockwell, admits the amount specified in the foregoing order to be correct, and he does not propose to further object to its being

signed, nor to ask further delay. But he does not consent to this order, and excepts to the ruling of the court sustaining said motion.

(Signed) L. C. ROCKWELL,
Solicitor for Bissell.

June 17, 1881.

And afterwards, and on the same day, to wit, the 17th day of June, A. D. 1881, the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order Drawing Money from Registry.

SIMON H. FOSS and ABSALOM V. HUNTER *vs.* CHARLES R. BISSELL and THE 1ST NATIONAL BANK OF DENVER.	In Chancery. To enforce an agreement.

Ordered, That the clerk of this court draw from the registry of the court thirty-six thousand four hundred and fifty-four $\frac{35}{100}$ dollars, being the amount therein deposited to the credit of the court in the above-entitled cause.

377 And afterwards, and on, to wit, the 29th day of September A. D. 1881, came again the said defendant, Charles R. Bissell, by L. C. Rockwell, Esq., his solicitor, and filed in said court his bond in appeal, and sued out of said court a writ of citation to the Supreme Court of the United States. And the said bond in appeal is in words and figures as follows, to wit:

Bond in Appeal.

Know all men by these presents, that we, Charles R. Bissell, as principal, and Lewis C. Rockwell, of Arapahoe county, State of Colorado, as surety, are held and firmly bound unto Simon H. Foss and Absalom V. Hunter in the penal sum of two hundred dollars, lawful money of the United States, to be paid to the said Simon H. Foss and Absalom V. Hunter, their heirs and assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents. Sealed with our seals, and dated this 25th day of July, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas lately, at the May term, A. D. 1880, of circuit court of the United States for the district of Colorado, in a suit pending in said court between Simon H. Foss and Absalom V. Hunter, complainants, against Charles R. Bissell and The First National
378 Bank of Denver, defendants, in the original bill, and the First National Bank of Denver, complainant, against said Charles R. Bissell, Simon H. Foss, and Absalom V. Hunter, defendants, in the cross-bill, judgment was rendered in the cross-bill in favor of said Simon H. Foss and Absalom V. Hunter against said Charles R. Bissell, their co-defendant in said cross-bill, for the sum of thirty-five thousand nine hundred and fifty-four $\frac{35}{100}$ ($35,954.35) dollars, together with one-half the cost of suit in said cross-bill, and all the

cost of suit in the original bill, and said Charles R. Bissell is desirous of moving said judgment into the Supreme Court of the United States for review by appeal, and Honorable Moses Hallett, United States district judge for the district of Colorado, having fixed the amount of said bond for costs at two hundred dollars, and he having also signed a citation, directed to said Simon H. Foss and Absalom V. Hunter, citing and admonishing them to be and appear at a regular term of the Supreme Court of the United States, to be held at Washington, District of Columbia, on the 2d Monday in October, 1881, and answer to said appeal:

Now, the condition of the above obligation is such, that if the said Charles R. Bissell shall prosecute his appeal with effect, and if he fails to make his plea good shall answer all costs rendered
379 or to be rendered in case the said decree is affirmed in said Supreme Court, then this obligation to be null and void; otherwise to be of full force and effect.

(Signed) CHARLES R. BISSELL. [SEAL.]
(Signed) LEWIS C. ROCKWELL. [SEAL.]

Approved Sept. 2, 1881.
(Signed) MOSES HALLETT, *Judge.*

UNITED STATES OF AMERICA, }
State of Colorado, District of Colorado, } *ss:*

Lewis C. Rockwell, surety in the within bond, being first duly sworn, deposes & says: He is worth in real estate in the State of Colorado a sum exceeding the sum of two thousand dollars over & above all his just debts and liabilities liable to levy and sale on execution.

(Signed) LEWIS C. ROCKWELL.

Subscribed & sworn to before me, this 2d day of September, 1881.
[SEAL.] (S'd) JOHN H. CLARK,
Notary Public in and for Arapahoe County, Colorado.

Endorsed: No. 247. Charles R. Bissell, appellant, *vs.* Foss & Hunter & First Nat. Bank, appellees. Appeal bond. Filed Sep. 29, 1881. (S'd) Edward F. Bishop, clerk.

380 And the said citation is next hereto attached in words and figures as follows, to wit:

Citation.

381 THE UNITED STATES OF AMERICA, *District of Colorado:*

The United States of America to Simon H. Foss, Absalom V. Hunter, and The First National Bank of Denver, appellees in a certain appeal, wherein Charles R. Bissell is appellant and yourselves are appellees, Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States to be holden at Wash-

ington, District of Columbia, on the tenth day of October next, 1881, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Colorado, wherein Simon H. Foss and Absalom V. Hunter are complainants against First National Bank of Denver and Charles R. Bissell, defendants in the original bill, and The First National Bank of Denver, complainant in the cross-bill, against Simon H. Foss, Absalom V. Hunter, and Charles R. Bissell, defendants in the cross-bill, to show cause, if any there be, why the judgment rendered against the said appellant, Charles R. Bissell, mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Moses Hallett, judge of the circuit court of the United States for the district of Colorado, this 2d day of September, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] MOSES B. HALLETT, *Judge.*

382 *Proof of Service.*

THE UNITED STATES OF AMERICA, } ss:
District of Colorado, }

On this 29th day of September, A. D. 1881, personally appeared Lewis C. Rockwell before me, the subscriber, a clerk of the circuit court of the United States for the district of Colorado, and makes oath that he sent a true copy of the within citation to Col. D. P. Dyer, attorney for Simon H. Foss & Absalom V. Hunter, at 417 Pine St., city of St. Louis, on or about September 4th, 1881, and afterwards & on the 18th day of September, A. D. 1881, affiant received a letter from said Col. Dyer, acknowledging the receipt by him of said citation at St. Louis before September 15th, 1881.

LEWIS C. ROCKWELL.

Sworn to and subscribed before me, this 29th day of Sept., A. D. 1881.

[SEAL.] EDWARD F. BISHOP,
Clerk Dist. Court U. S.

UNITED STATES OF AMERICA, } ss:
State of Colorado, District of Colorado, }

I acknowledge service upon me of a copy of the within citation this 5th day of September, A. D. 1881.

JOHN Q. CHARLES,
Attorney for First Nat. Bank of Denver.

[Endorsed:] Gen. No. 247. Circuit court of the United States, district of Colorado. Chas. R. Bissell, plaintiff in error, *vs.* Simon H. Foss *et al.*, defendants in error. Citation. Filed in circuit court of the U. S this 29 day of Sept., A. D. 1881. Edward F. Bishop, clerk.

383 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

I, Edward F. Bishop, clerk of the circuit court of the United States for the district of Colorado, sitting at Denver, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the bill, subpœna, three appearances, two answers, replication, stipulation as to hearing, motion to dismiss, opinion, deposition, master's report, exceptions to master's report, stipulation as to testimony, decree, stipulation amending decree, and also the cross-bill, subpœna, answers, stipulation, motion, objection, bond in appeal, citation, and all orders of court heretofore filed or had and entered of record in said court, and in the cause in said court then pending, wherein Simon H. Foss *et al.* were complainants and Charles R. Bissell *et al.* were defendants, as fully and completely as the same now remain on file or of record in my office.

In testimony to the above, I do hereunto sign my name and affix the seal of said court at Denver, in said district, this 29th day of September, A. D. 1881.

[SEAL.] EDWARD F. BISHOP, *Clerk.*

384 Cost of transcript, 866 folios, @ 10c..... $86 60
Certificate 35

$86 95

Paid by— L. C. ROCKWELL.

Endorsed on cover: Colorado C. C. U. S. No. 103. Charles R. Bissell, appellant, *vs.* Simon H. Foss, Absalom V. Hunter, and The First National Bank of Denver. Filed October 15, 1881.